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Collection



















A  
COMPLETE COLLECTION  
OF  
State Trials  
AND  
PROCEEDINGS FOR HIGH TREASON AND OTHER  
CRIMES AND MISDEMEANORS

FROM THE  
EARLIEST PERIOD TO THE YEAR 1783,  
*WITH NOTES AND OTHER ILLUSTRATIONS:*

COMPILED BY  
T. B. HOWELL, Esq. F.R.S. F.S.A.

AND  
CONTINUED  
FROM THE YEAR 1783 TO THE PRESENT TIME:

BY  
THOMAS JONES HOWELL, Esq.

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VOL. XXIX.  
[BEING VOL. VIII. OF THE CONTINUATION]  
44—46 GEORGE III.....A. D. 1804—1806.

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L O N D O N:

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1821.



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THOMAS JONES HOWELL ESQ.

VOL. XXIX

AND OF THE COURT OF COMMONS

IN THE YEAR 1783

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## A D D E N D A.

To second *Note* in p. 106, *add*, See also Mr. Baron Smith's judgment, *infra*, p. 316.

To *Note* in p. 197, *add*, See also the judgment of Mr. Justice Daly, *antè*, p. 186; that of Mr. Baron Maclelland, *infra*, p. 306; that of Mr. Baron Smith, *infra*, pp. 327, *et seq.*; and the speech of Lord Chancellor Eldon, *infra*, p. 418.

The case of sir Francis Burdett has been recently in part reported in 3 Barn. Ald. 717, and the report will doubtless be completed in the fourth volume of the same work.

*Note* to the word "original," p. 467, l. 34, See the cases cited in Phill. Ev. 486, and *Brewster v. Sewell*, 3 Barn. Ald. 296.

To *Note* in p. 748, *add*, See too *Betham v. Benson*, 1 Gow. 45.

N. B. When the case of lord Melville was sent to press, I intended to subjoin to it an Appendix of documents illustrative of the history of that prosecution; I was however induced to abandon this plan on finding that the trial itself would occupy a much larger portion of the present Volume than I had originally expected. The Reader is therefore requested to cancel in pages 550, 559, and 599, the references to the Appendix, and instead thereof, in p. 550, to refer to 3 Hansard's Parl. Debates, 1147; in p. 559 to 5 Hansard's Parl. Debates, Appendix, p. 1; and in p. 599 to 6 Hansard's Parl. Debates, Appendix, p. cxlii.

## E R R A T A.

Page 1, line 6, *for* Francis Osborne, *read* Charles Osborne.

Page 64, line 2, *for* of jury, *read* of a jury.

Page 354, line 32, *for* han, *read* had.

Page 402, line 22, *for* a totally different system of law there prevails, *read* there prevails a totally different system of laws.

Page 642, line 13 from bottom, *for* For a history, *read* For the history.

Page 671, line 19 from bottom, *for* dwell, *read* dwells.

Page 747, line 4, *for* we that, *read* that we.

Page 749, line 12, *for* N. P. c., *read* N. P. C.

Page 1197, line 25, *for* service;—and what, *read* service, and—what.

———— line 25 from bottom, *dele the comma after* peril

———— line 24 from bottom, *insert a comma after* enemies.

Page 1199, line 16, *for* having, *read* seeing.

———— line 21, *for* without, *read* (without

———— line 22, *for* part, the, *read* part) the.

Page 1210, line 29, *for* it, *read* it."

———— line 19 from bottom, *for* Chatham, *read* Chatham."

———— line 18 from bottom, *for* it, *read* "it.

Page 1236, last line, *for* Jur, *read* Jun.

### *Mr. Godwin's "Cursory Strictures."*

*Note.* In Vol. iii, p. 310, of this Continuation, the Cursory Strictures on Lord Chief Justice Eyre's Charge are attributed to the late Mr. Felix Vaughan; I have since learnt that *this* pamphlet was written by Mr. W. Godwin. It was from Mr. Vaughan's having written *another* at the same period that the mistake originated.

The Ninth Volume of this Series of State Trials is in the Press, and will be published in March; it will contain the Proceedings in Ireland in December 1806, under the Special Commission issued for the Trial of the Threshers; a full Report of the Proceedings in the Case of General Picton, from authentic MSS. &c. &c.



# APPENDIX

A. B. When the case of Lord Melville was sent to press, I intended to add to it an appendix of documents illustrative of the history of that prosecution; I was however induced to abandon this plan on finding that the trial itself would occupy a much larger portion of the present volume than I had originally expected. The matter is therefore requested to be cancelled in pages 550, 551, and 552, the references to the Appendix, and instead thereof, in p. 550, to refer to 3 Hansard's Parl. Debates, 1141; in p. 551 to 3 Hansard's Parl. Debates, Appendix, p. 1; and in p. 552 to 3 Hansard's Parl. Debates, Appendix, p. 1.

The case of Sir Francis Baring has been recently in part reported in 3 Hans. Adv. 717, and the report will doubtless be completed in the fourth volume of the same work. Note to the word "original," p. 457, l. 32. See the cases cited in Phil. Ex. 330, and Brewster & Sewell, 3 Hans. Adv. 200. To those in p. 448, add: See too Bellamy v. Hanson, 1 Cow. 43.

# ERRATA

Page 1, line 6, for Francis Osborne, read Charles Osborne.  
 Page 64, line 2, for of June, read of a July.  
 Page 334, line 32, for law, read bank.  
 Page 402, line 22, for a totally different system of law, read a totally different system of law.  
 Page 482, line 15 from bottom, for I or a history, read for the history.  
 Page 482, line 10 from bottom, for dwell, read dwell.  
 Page 482, line 4, for we that read that we.  
 Page 482, line 1, for V. L. C., read V. L. C.  
 Page 1197, line 25, for service, and what, read service, and—what.  
 Page 1197, line 25 from bottom, for the cause of her birth.  
 Page 1197, line 25 from bottom, read a common expression.  
 Page 1197, line 10, for having, read seeing.  
 Page 1197, line 27, for without, read without.  
 Page 1197, line 28, for part, the, read part, the.  
 Page 1210, line 29, for it, read it.  
 Page 1210, line 17 from bottom, for Chatham, read Chatham.  
 Page 1210, line 18 from bottom, for it, read it.  
 Page 1238, last line, for Jan, read Jan.

# Mr. Godwin's "Curiosities of Literature."

Note. In Vol. II. p. 310, of this Collection, the Curious Sentences on Lord Chief Justice Eyre's Charge are attributed to the late Mr. John Vaughan; I have since learnt that this pamphlet was written by Mr. W. Godwin. It was from Mr. Vaughan's having written earlier at the same period that the mistake originated.

The Ninth Volume of the Series of State Trials is in the Press, and will be published in January; it will contain the Proceedings in Ireland in December 1806, under the Special Commission, and for the Trial of the Rebels; a full Report of the Proceedings in the Case of General Pakenham, from October 1806 to 1807.



# STATE TRIALS,

&c. &c.

670. Trial of WILLIAM COBBETT for Libels on the Right Hon. PHILIP Earl of HARDWICKE, Lord-Lieutenant of Ireland; the Right Hon. JOHN Lord REDESDALE, Lord High Chancellor of Ireland; the Hon. FRANCIS OSBORNE, one of the Justices of the Court of King's-Bench of Ireland; and ALEXANDER MARSDEN, Esq., one of the under Secretaries in the Office of the Chief Secretary of the said Lord-Lieutenant of Ireland; tried by a special Jury before the Right Hon. Edward Lord Ellenborough, Lord Chief Justice of his Majesty's Court of King's-Bench, at Westminster, on Thursday May 24: 44 GEORGE III. A. D. 1804.\*

## *Counsel for the Crown.*

Mr. *Attorney-General* [The Honourable Spencer Perceval, afterwards first Lord of the Treasury and Chancellor of the Exchequer];

Mr. *Solicitor-General* [Sir Thomas Manners Sutton, afterwards Lord Manners and Lord Chancellor of Ireland];

The Honourable *Thomas Erskine* [afterwards Lord Chancellor Erskine];

Mr. *Garrow* [afterwards a baron of the Exchequer];

Mr. *Dallas* [afterwards Lord Chief Justice of the Common Pleas];

Mr. *Abbot* [afterwards Lord Chief Justice of the King's Bench].

## *Counsel for the Defendant.*

Mr. *Adam* [afterwards Lord Chief Commissioner of the Jury Court of Scotland];

Mr. *Richardson* [afterwards a judge of the Common Pleas].

\* See the next case and the proceedings against the Honourable Robert Johnson A. D. 1805, *infra*.

## THE INFORMATION.

Pleas before our lord the king at Westminster, of Easter Term in the forty-fourth year of the reign of our sovereign lord George the 3rd, by the grace of God of the United Kingdom of Great-Britain and Ireland, King, Defender of the Faith.—Amongst the pleas of the king.—Roll.

*Middlesex.*  
*Amongst the in-*  
*formations of*  
*last Term.*  
No. } BE it remembered that the honourable Spencer Perceval Attorney-general of our present sovereign lord the king who for our said lord the king in this behalf prosecuteth in his proper person came here into the Court of our said lord the king before the king himself at Westminster on Monday next after the Octave of Saint Hilary last past and for our said lord the king brought into the Court of our said lord the king before the king himself then and there a certain information against William Cobbett late of Westminster in the county of Middlesex gentleman which said information followeth in these words (that is to say) Middlesex (to wit) Be it remembered that the

B



honourable Spencer Perceval Attorney-general of our present sovereign lord the king who for our said lord the king in this behalf prosecuteth in his proper person cometh here into the court of our said lord the king before the king himself at Westminster on Monday next after the Octave of Saint Hilary in this same term, and for our said lord the king giveth the Court here to understand and be informed

1st Count.—That William Cobbett late of Westminster in the county of Middlesex gentleman being a malicious and ill disposed person and unlawfully and maliciously devising and intending to move and incite the liege subjects of our said lord the king to hatred and dislike of our said lord the king's administration of the government of this kingdom and to insinuate and cause it to be believed that the people of that part of the United Kingdom of Great-Britain and Ireland called Ireland were oppressed aggrieved and injured by our said lord the king's government of the said part of the said United Kingdom and to traduce defame and vilify the persons employed by our said lord the king in the administration of the government of the said part of the said United Kingdom, and especially the right honourable Philip Earl of Hardwicke our said lord the king's lieutenant general and governor general of the said part of the said United Kingdom and the right honourable John Lord Redesdale our said lord the king's lord chancellor and keeper of the great seal and one of his most honourable privy council of and for the said part of the said United Kingdom on the fifth day of November in the forty-fourth year of the reign of our sovereign lord George the 3rd by the grace of God of the United Kingdom of Great-Britain and Ireland King Defender of the Faith at Westminster in the county of Middlesex unlawfully and maliciously did print and publish and cause and procure to be printed and published a certain scandalous and malicious libel in the form of a letter entitled Affairs of Ireland containing therein divers scandalous and malicious matters and things of and concerning the said part of the said United Kingdom and the people thereof and our said lord the king's government thereof and also of and concerning the said Philip Earl of Hardwicke so being such lieutenant and governor as aforesaid and the said John Lord Redesdale so being such chancellor and privy counsellor as aforesaid and also of and concerning Alexander Marsden esquire then and there being one of the under secretaries in the office of the chief secretary of the said Philip Earl of Hardwicke so being such lieutenant and governor as aforesaid (that is to say) in one part thereof according to the tenor and effect following (that is to say)

"Sir—'*Equo ne credite Teucris*' was the advice which in a dangerous moment Laocoon gave to the Trojans. It will be remem-

bered that the *equus* against which that sagacious adviser cautioned his countrymen was a wooden one. His countrymen did not regard Laocoon. They received the wooden representative of wisdom. They approached it as if it possessed authority and power. Its wooden head towered above their houses. But though the machine itself was innoxious wood the credulous Trojans found its hollow head and exalted sides were nothing less than receptacles for greedy peculators and blood-thirsty assassins. The ingenious author of the story did not mean to confine the lesson which it inculcates to the tale of Troy alone. He meant to take advantage of that easy metaphorical expression which by the common assent of mankind has moulded itself into most languages and by which a certain species of head (which the moderns by various moral experiments have ascertained to be a non-conductor of ideas) has been denominated a wooden head. He meant to caution future nations not to put trust or confidence in the apparent innocence of any such wooden instrument and not to suffer themselves to be led to exalt it into consequence or to pay it any respect. He meant to tell that any people who submitted to be governed by a wooden head would not find their security in its supposed innoxiousness as its hollowness would soon be occupied by instruments of mischief. When I found sir this portion of the kingdom" (meaning the said part of the said United Kingdom) "overwhelmed by such consequences to our property as the rapacity of Mr. Marsden" (meaning the said Alexander Marsden) "and his friends and such consequences to our lives as the pikes of Mr. Emmett and his friends have lately produced when I could trace all these evils as the inevitable issue from the head and body of such a government as that of lord Hardwicke" (meaning the said Philip Earl of Hardwicke) "and I am told of his innoxiousness and his firmness I still reply the story of the wooden horse and I shall still notwithstanding the fate of Laocoon raise my voice to my countrymen and cry *Equo ne credite Teucris*. Not sir that I would be understood literally. I do not mean to assert that the head of my lord Hardwicke" (meaning the said Philip Earl of Hardwicke) "is absolutely built of timber. My application like that of the original author of the tale is only metaphorical. Yet at the same time I cannot avoid suspecting that if the head of his excellency" (meaning the said Philip Earl of Hardwicke) "were submitted to the analysis of any such investigator of nature as Lavoisier it would be found to contain a superabundant portion of particles of a very ligneous tendency. This sir is the lord Hardwicke of doctor Adington against whose government 'not a murmur of complaint has been heard'—while our property has been subject to the plunder of his clerks and our persons have been exposed to pikes of the rebels. Still



however the innocence of lord Hardwicke" (meaning the said Philip Earl of Hardwicke) "as to any intention of mischief is held forth But I reply in the words of Mr. Burke 'they who truly mean well must be fearful of acting ill Delusive good intention is no excuse for presumption' And I may add in my own words that the government of a harmless man is not therefore a harmless government" And in another part thereof, according to the tenor and effect following (that is to say) "Inquiry and research are the duty and resource of the ignorant and therefore I did inquire The result of no small attention bestowed in this pursuit was, that I discovered of our viceroy" (meaning the said Philip Earl of Hardwicke) "that he was in rank an earl in manners a gentleman in morals a good father and a kind husband and that he had a good library in St. James's-square Here I should have been for ever stopped if I had not by accident met with one Mr. Lindsay a Scotch parson since become (and I am sure it must be by Divine Providence for it would be impossible to account for it by secondary causes) bishop of Killaloo in Ireland—From this Mr. Lindsay I further learned that my lord Hardwicke" (meaning the said Philip Earl of Hardwicke) "was celebrated for understanding the modern method of fattening sheep as well as any man in Cambridgeshire" And in another part thereof according to the tenor and effect following (that is to say) "While I have been writing sir a map of the West Indies happened to hang before me My eyes wandered I know not why upon it and fixed upon one of those little islands which have been lately by the British troops redeemed from the capitulation of lord Cornwallis at Amiens Give me leave to suppose that in the course of a few years one of those little islands should become highly cultivated and that a considerable portion of British property became vested in its land and in its trade Suppose that by some unfortunate combination of events this little island should be deeply shaken by insurrection within and should be loudly menaced by invasion from without Suppose a powerful fleet of the enemies of the British name lay to windward ready filled with troops for landing while a desperate band of ruffians were secretly arming in its bosom ready to aid that landing of a foreign enemy Suppose in this distress a committee of West India proprietors whose money had been vested in this little island should apply to the doctor Addington for assistance and suppose he were to rise up and desire them to quit their apprehensions for that he had entrusted the care of their island to a very eminent sheepfeeder from Cambridgeshire who was to be assisted in all his counsels by a very able and strong built chancery pleader from Lincoln's-Inn Give me leave to ask you sir who know the city much better than I can pretend to do what would a sugar com-

mittee issuing from one of their coffee-houses say to such an answer from a British minister Why sir the walls of St. Stephen's and the chambers in Downing-street would be made to ring with their vociferous reproaches And yet sir to this situation is that portion of the united kingdom (meaning the said part of the said united kingdom) reduced on the strength and vigour of which at this moment not only his own safety but as I have in my former letter stated the safety of the British empire and consequently I may assume the safety of Europe does entirely depend Against the truth of the description I have given of its rulers I may challenge the most daring supporter of the present government to produce me one single act in the lives of either of those truly great characters of the Doctor" (meaning the said Philip earl of Hardwicke and John Lord Redesdale) "which can entitle them to claim one particle of trust or confidence from the public beyond the bounds and limits within which I have encircled their exploits On the chancery pleader" (meaning the said John lord Redesdale) "perhaps I may have laid too great a stress he is not of the first consequence though in a future letter I may perhaps point out to you the mischiefs which the intermeddling of such a man in matters out of the course of his practice may occasion But with respect to lord Hardwicke" (meaning the said Philip earl of Hardwicke) "it may be replied that my challenge is unfair because it is impossible to justify his having been appointed to the government of Ireland by any instances of former political ability as the acceptance of his present office was his first political essay What! Is he one of the tribe of the Hobarts Westmorelands and Camdens? Is he one of that tribe who have been sent over to us to be trained up here into politicians as they train the surgeons apprentices in the hospitals by setting them at first to bleed the pauper patients? Is this a time for a continuation of such wanton experiments? The gift of lord Hardwicke to us" (meaning thereby the appointment of the said Philip earl of Hardwicke to the said place and office of lieutenant general and governor-general of the said part of the said United Kingdom) "at such a period cannot be compared to any thing else than the prank of Falstaff upon prince Hal at the battle of Shrewsbury when the knight handed over his pistol to the prince For indeed sir by the present to us of lord Hardwicke" (meaning the aforesaid appointment of the said Philip earl of Hardwicke) "that sentence has been proved to us in a bloody truth which Falstaff said in a good-humoured jest 'here's what will sack a city' To the great scandal and disgrace of the said Philip earl of Hardwicke and John lord Redesdale In contempt of our said lord the king and his laws to the evil example of all others in the like case of-fending and against the peace of our said lord the king his crown and dignity



*2nd. Count.*—And the said attorney-general of our said lord the king for our said lord the king further giveth the Court here to understand and be informed that the said William Cobbett so being such person as aforesaid and again unlawfully and maliciously devising and intending as aforesaid and also further unlawfully and maliciously devising and intending to traduce defame and vilify the honourable Charles Osborne then and there being one of the justices of our said lord the king assigned to hold the pleas in the court of our said lord the king before the king himself in Ireland aforesaid afterwards to wit on the tenth day of December in the forty-fourth year of the reign of our said sovereign lord the king at Westminster in the county of Middlesex unlawfully and maliciously did print and publish and cause and procure to be printed and published a certain other scandalous and malicious libel in the form of a letter intituled Affairs of Ireland in some parts of which said last-mentioned libel were and are contained divers scandalous malicious and seditious matters and things of and concerning the said part of the said United Kingdom and the persons employed by our said lord the king in the administration of the government of the said part of the said United Kingdom and of and concerning the said Charles Osborne so being such justice as aforesaid and the said Alexander Marsden so being such under secretary as aforesaid (that is to say) in one part thereof according to the tenor and effect following (that is to say) “What I have now to touch upon must be done with a delicate hand I will confine myself to a bare narrative of facts and will not presume to give any opinion As soon as the government had fully recovered its recollection a commission directed to five of the judges issued for the trial of those rebels who had been arrested for treason committed in the county and city of Dublin This commission having issued while the judges were on circuit was filled up (and very properly filled up) with the names of the five senior of those judges who were then on the circuits which were likely to terminate at the earliest period of time Such was the reason given by government for the particular selection of the judges named in that commission and it certainly was a good reason In some time after this commission had been sitting it became necessary to issue a new commission for the trial of rebels in the shires of Antrim and of Down In the appointment of this second commission the principle which directed the selection in the first was not adhered to On the contrary the junior judge of the twelve” (meaning the said Charles Osborne) “was very anxiously called out and placed in this new commission over the heads of a number of his seniors This however could not and ought not to have given offence to any of those senior judges because whatever opinion of them the government” (meaning the persons employed by our said lord the king in

the administration of the government of the said part of the said united kingdom) “may have manifested in such an appointment the opinion of the present government” (meaning the persons employed by our said lord the king in the administration of the government of the said part of the said united kingdom) “upon such a subject (known to be influenced by motives very different from general justice) is too contemptible to have the slightest effect upon any of those learned judges in the public mind The circumstance therefore was not at first attended to There is published in this city a newspaper called the Dublin Journal It is in general conducted with good sense loyalty and regard to truth but in particular deviations it is known to be under the control and immediate direction of government” (meaning the persons employed by our said lord the king in the administration of the government of the said part of the said united Kingdom) “In that paper of the 10th of October last a publication appeared which purported to be a charge given by the junior judge above alluded to to the grand jury of the county of Antrim In this place I beg now to declare that I am far from attempting to assert that the learned judge did pronounce any such charge and when I speak of this charge I request you will understand I mean only the newspaper publication abovementioned In the newspaper publication the learned judge is made to tell the grand jury that ‘through the well-timed efforts and strenuous exertions of a wise and energetic government &c. the progress of such crimes as lately disgraced this country had been effectually checked’ If the learned justice did make any such assertion (which I am far from supposing) with what amazement the grand jury must have received such a broadside poured upon the truth of the fact I cannot as I was not present know but I can very well imagine what the feelings of twenty-three well-informed gentlemen must have been Their respect and a thorough knowledge of their duty would necessarily keep them silent”—And in another part thereof according to the tenor and effect following (that is to say) “But sir suggestion does not stop here Men ask how could (if the learned justice did make any such assertion) the learned justice be led to give credit to a position which contradicts the evidence of the senses of every man in the kingdom who was present at or knew any thing of the transaction? How could a learned judge be supposed to assert that which no man in the kingdom would assert unless he had some reasons of the same nature as those which prevailed on Mr. Marsden’s attorney-general on the trials for high treason to assert something of the same kind? Men sir couple the extraordinary selection of the learned justice” (meaning the said Charles Osborne) “from amongst his fellows with the extraordinary assertion attributed to him in a



government newspaper and they ask if he made that assertion where did he get his information? Was he ever in Mr. Marsden's" (meaning the said Alexander Marsden's) "audience-room since the night of the 23rd of July? What passed there? What were the pre-disposing causes which induced government to select particularly that learned justice?" (meaning the said Charles Osborne) "Could government have foreseen (and if so by what faculty) that the learned justice would have given an instruction to the grand jury so very useful and so very grateful to the government? What night telescope could have been applied to the eye of Mr. Marsden" (meaning the said Alexander Marsden) "which through the dark womb of things unborn could have enabled him to perceive through this little future star of praise springing from the creative lips of the learned justice? Here sir decorum towards you and towards the public induces me to be silent as to other and perhaps stronger observations But I may I believe add what men also say that if it were possible the ermined robe of the most awful attribute of his majesty should have been wrapped round the acts of Mr. Marsden" (meaning the said Alexander Marsden) "in order to screen them from public disgrace we might then look for another but not less fatal end to our liberties and to our constitution than that which rebellion or invasion could produce And in truth they say that except as to momentary effects rebellion and invasion might be viewed with indifference if it can be supposed that the stained hands of a petty clerk had been washed in the very fountain of justice"—And in other parts of which said last-mentioned libel were and are contained divers scandalous and malicious matters and things of and concerning the said John Lord Redesdale and the conduct of the said John lord Redesdale as such chancellor and privy counsellor as aforesaid by way of antithesis and contrast between the conduct which in and by the said last-mentioned libel it is insinuated that the said John Lord Redesdale as such chancellor and privy counsellor as aforesaid had adopted and pursued and the conduct which in and by the said last-mentioned libel it is asserted that the late right honourable Lloyd, Lord Kenyon now deceased would have adopted and pursued (that is to say) in one part thereof according to the tenor and effect following (that is to say): "Instead of calling him" (meaning the said late Lloyd Lord Kenyon) "to the high station which he so ably filled had it pleased his majesty to bless the western neighbours of Cambricus" (meaning the people of the said part of the said United Kingdom of Great Britain and Ireland called Ireland) "who certainly owe the honest and warm-hearted principality" (meaning the principality of Wales) "no ill will with lord Kenyon" (meaning the said late Lloyd Lord Kenyon) "for their chancellor I can very

well conceive what lord Kenyon" (meaning the said late Lloyd lord Kenyon) "in such a situation would have done and also what he would not have done From a rare modesty of nature or from a rare precision of self knowledge lord Kenyon would have acted with reserve and circumspection on his arrival in a country with the moral qualities of the inhabitants of which and with their persons manners and individual characters and connexions he must have been utterly unacquainted In such a country torn with domestic sedition and treason threatened with foreign invasion and acting since the union under an untried constitution if doctor Addington had required that lord Kenyon should direct a Cambridgeshire earl" (meaning the said Philip Earl of Hardwicke) "'in all his councils' lord Kenyon would as soon at the desire of lord St. Vincent have undertaken to pilot a line of battle ship through the Needles Particularly the integrity of lord Kenyon would have shrunk from such an undertaking if a condition had been added to it that no one nobleman or gentleman who possessed any rank estate or connexion in the country should upon any account be consulted" (meaning and insinuating thereby, and intending to cause it to be believed that he the said John lord Redesdale as such chancellor and privy counsellor as aforesaid had undertaken to direct the said Philip Earl of Hardwicke in all his councils as such lieutenant and governor as aforesaid in the government of the said part of the said United Kingdom with a condition that no one nobleman or gentleman who possessed any rank estate or connexion in the said part of the said United Kingdom should be consulted as to the government thereof) "His pride would have spurned at the undertaking if he were told that to the Cambridgeshire earl" (meaning the said Philip, earl of Hardwicke) "and himself in the cares of government a clerk in the secretary's office and a couple of lawyers without political habits political information or honourable connexion were to be joined as assessors and to be the only assessors And lord Kenyon's pride and integrity would have both joined in preventing him from being himself the instrument of introducing such men into a cabinet of government" (meaning and insinuating thereby and intending to cause it to be believed that the said John Lord Redesdale as such chancellor and privy counsellor as aforesaid had been the instrument of introducing a clerk into the secretary's office and a couple of lawyers without political habits political information or honourable connexion into the cabinet of the government of the said part of the said United Kingdom) "If any one man could be found of whom a young but unhappy victim of the justly offended laws of his country had in the moment of his conviction and sentence uttered the following apostrophe— 'That viper! whom my father nourished! 'He it was from whose lips I first imbibed



‘those principles and doctrines which now by their effects drag me to my grave and he it is who is now brought forward as my prosecutor and who by an unheard of exercise of the prerogative has wantonly lashed with a speech to evidence the dying son of his former friend when that dying son had produced no evidence had made no defence but on the contrary had acknowledged the charge and had submitted to his fate’ Lord Kenyon would have turned with horror from such a scene in which although guilt was in one part to be punished yet in the whole drama justice was confounded humanity outraged and loyalty insulted Of lord Kenyon therefore (Cambricus must well know) it never could have been believed that he himself would lead such a character forward introduce him to the favour of a deceived sovereign clothe him in the robes and load him with the emoluments of office Lord Kenyon must have known that a noble duke for having toasted at a drunken club in a common tavern to a noisy rabble ‘the sovereignty of the people’ was struck by his majesty’s command out of the privy council and deprived of all his offices both civil and military If therefore any man were to be found who not at a drunken club or to a brawling rabble but in a grave and high assembly not in the character of an inebriated toast-master but in that of a sober constitutional lawyer had insisted on the sovereignty of the people as a first principle of the English law and had declared that by law an appeal lay from the decision of the tellers of the houses of parliament to that of the ‘tellers of the nation’ and that if a particular law were disagreeable to the people however it might have been enacted with all royal and parliamentary solemnity nevertheless it was not binding and the people by the general law were exempted from obedience to such a particular law because the people were the supreme and ultimate judges of what was for their own benefit Lord Kenyon” (meaning the said Lloyd Lord Kenyon) “if he had been chancellor in any kingdom in Europe would have shrunk from recommending any such man to the favour of a monarch while there yet remained a shadow of monarchy visible in the world” (meaning and insinuating thereby and intending to cause it to be believed that the said John Lord Redesdale as such chancellor and privy counsellor as aforesaid had recommended a base and disloyal man to the favour of our said lord the king)—And in another part thereof according to the tenor and effect following (that is to say) “It was said of lord Kenyon, that he loved money If so he loved his own money only and not the money of any other man. Lord Kenyon therefore as chancellor never would have made any rule or order by the effects of which the secretary of a master of the rolls would be deprived of all fees for the purpose of throwing all those fees into the hands of the secretary

to the chancellor the better to enable that secretary to discharge the pension of some unknown annuitant on his official profits” (meaning and insinuating thereby and intending to cause to be believed that the said John Lord Redesdale as such chancellor as aforesaid had wickedly and corruptly made an order by which the secretary of the master of the rolls of the said part of the said United Kingdom would be deprived of his fees for the purpose of throwing the same fees into the hands of the secretary of himself the said lord Redesdale to enable his said secretary to discharge the pension of some person receiving an annuity out of the official profits of his said secretary)—And in another part thereof according to the tenor and effect following (that is to say) “The professional pride and the inborn honour of lord Kenyon” (meaning the late Lloyd lord Kenyon) “would never have suffered him to enter into a combination to sap by underhand means the independence of his brethren the judges” (meaning and insinuating thereby and intending to cause to be believed that the said John lord Redesdale as such chancellor as aforesaid had entered into a combination to sap by underhand means the independence of the judges of the said part of the said United Kingdom) “He never would have suffered the great seal in his hands to be used for the purpose of garbling the Bench in order to gratify those who might be contented publicly to eulogize that government which privately they must have despised” (meaning and insinuating thereby and intending to cause it to be believed that the said John lord Redesdale as such chancellor as aforesaid had suffered the great seal of the said part of the said United Kingdom to be used for the purpose of garbling the bench of judges of the said part of the said United Kingdom in order to gratify those who would publicly eulogize the government of the said part of the said United Kingdom which they must have privately despised) “Nor would he have employed any of his leisure in searching into offices for practices by which he might harass the domestic arrangements of others whose pride and whose integrity would not bend to his views and thus double the vigour of his attack by practising on the hopes of some and endeavouring to work upon the fears of others” (meaning and insinuating thereby and intending to cause it to be believed that the said John lord Redesdale had searched into offices for practices by which he might harass the domestic arrangements of other persons whose pride and integrity would not bend to his views) to the great scandal and disgrace of the said Philip earl of Hardwicke John lord Redesdale and Charles Osborne In contempt of our said lord the king and his laws to the evil example of all others in the like case offending and against the peace of our said lord the king his crown and dignity.

*3rd Count*—And the said attorney general



of our said lord the king for our said lord the king further giveth the Court here to understand and be informed that the said William Cobbett so being such person as aforesaid and again unlawfully maliciously and seditiously devising and intending to move and incite the liege subjects of our said lord the king to hatred and dislike of our said lord the king's administration of the government of the said part of the said United Kingdom and also unlawfully and maliciously devising and intending to traduce defame vilify and bring into public hatred and contempt the said Philip earl of Hardwicke so being our said lord the king's lieutenant general and governor general of the said part of the said United Kingdom afterwards to wit on the fifth day of November in the forty-fourth year of the reign of our said lord the king at Westminster in the county of Middlesex unlawfully and maliciously did print and publish and cause and procure to be printed and published a certain other scandalous and malicious libel containing therein divers scandalous and malicious matters and things of and concerning the said part of the said United Kingdom and the people thereof and also of and concerning the said Philip earl of Hardwicke so being such lieutenant and governor as aforesaid that is to say in one part thereof according to the tenor and effect following (that is to say) Sir "*Equo ne credite Teueri* was the advice which in a dangerous moment Laocoon gave to the Trojans It will be remembered that the *equus* against which that sagacious adviser cautioned his countrymen was a wooden one His countrymen did not regard Laocoon They received the wooden representative of wisdom They approached it as if it possessed authority and power Its wooden head towered above their houses but though the machine itself was innoxious wood the credulous Trojans found its hollow head and exalted sides were nothing less than the receptacles for greedy peculators and blood thirsty assassins The ingenious author of the story did not mean to confine the lesson which it inculcates to the tale of Troy alone He meant to take advantage of that easy metaphorical expression which by the common assent of mankind has moulded itself into most languages and by which a certain species of head (which the moderns by various moral experiments have ascertained to be a non-conductor of ideas) has been denominated a wooden head He meant to caution future nations not to put trust or confidence in the apparent innocence of any such wooden instrument and not to suffer themselves to be led to exalt it into consequence or to pay to it any respect He meant to tell them that any people who submitted to be governed by a wooden head would not find their security in its supposed innoxiousness as its hollowness would soon be occupied by instruments of mischief When I found sir this portion of the kingdom" (meaning the said part of the

said United Kingdom) "overwhelmed by such consequences to our property as the rapacity of Mr. Marsden and his friends and such consequences to our lives as the pikes of Mr. Emmett and his friends have lately produced when I could trace all these evils as the inevitable issue from the head and body of such a government as that of lord Hardwicke" (meaning the said Philip earl of Hardwicke) "and I am told of his innoxiousness and his firmness I still reply the story of the wooden horse and I shall still notwithstanding the fate of Laocoon raise my voice to my countrymen and cry *Equo ne credite Teueri* Not sir that I would be understood literally I do not mean to assert that the head of my lord Hardwicke" (meaning the said Philip earl of Hardwicke) "is absolutely built of timber My application like that of the original author of the tale is only metaphorical yet at the same time I cannot avoid suspecting that if the head of his excellency" (meaning the said Philip earl of Hardwicke) "were submitted to the analysis of any such investigator of nature as Lavoisier it would be found to contain a superabundant portion of particles of a very ligneous tendency This sir is the lord Hardwicke of doctor Addington 'against whose government not a murmur of complaint has been heard' while our property has been subject to the plunder of his clerks and our persons have been exposed to the pikes of the rebels still however the innocence of lord Hardwicke" (meaning the said Philip earl of Hardwicke) "as to any intention of mischief is held forth But I reply in the words of Mr. Burke 'they who truly mean well must be fearful of acting ill Delusive good intention is no excuse for presumption' and I may add in my own words that the government of a harmless man is not therefore a harmless government" To the great scandal and disgrace of the said Philip earl of Hardwicke in contempt of our said lord the king and his laws to the evil example of all others in the like case offending and against the peace of our said lord the king his crown and dignity

4th Count—And the said attorney general of our said lord the king for our said lord the king giveth the Court here further to understand and be informed that the said William Cobbett so being such person as aforesaid and again unlawfully maliciously and seditiously devising and intending as last aforesaid and also further unlawfully maliciously and seditiously devising and intending to traduce defame and vilify the said John lord Redesdale so being such chancellor and privy counsellor as aforesaid afterwards to wit on the same day and year last aforesaid at Westminster aforesaid in the county of Middlesex unlawfully and maliciously did print and publish and cause and procure to be printed and published a certain other scandalous and malicious libel containing therein divers scandalous and malicious matters and things of and con-



cerning the said part of the said United Kingdom and the people thereof and also of and concerning the said Philip earl of Hardwicke so being such lieutenant and governor as aforesaid and the said John lord Redesdale so being such chancellor and privy counsellor as aforesaid (that is to say) in one part thereof according to the tenor and effect following (that is to say) "While I have been writing sir a map of the West Indies happened to hang before me My eye wandered I know not why upon it and fixed upon one of those little islands which have been lately by the British troops redeemed from the capitulation of lord Cornwallis at Amiens Give me leave to suppose that in the course of a few years one of those little islands should become highly cultivated and that a considerable portion of British property became vested in its land and in its trade suppose that by some unfortunate combination of events this little island should be deeply shaken by insurrection within and should be loudly menaced by invasion from without suppose a powerful fleet of the enemies of the British name lay to windward ready filled with troops for landing while a desperate band of ruffians were secretly arming in its bosom ready to aid that landing of a foreign enemy suppose in this distress a committee of the West-India proprietors whose money had been vested in this little island should apply to the doctor Addington for assistance and suppose he were to rise up and desire them to quit their apprehensions for that he had entrusted the care of their island to a very eminent sheep-feeder from Cambridgeshire who was to be assisted in all his counsels by a very able and strong-built chancery pleader from Lincoln's Inn Give me leave to ask you sir who know the city much better than I can pretend to do what would a sugar committee issuing from one of their coffee-houses say to such an answer from a british minister? why sir the walls of St. Stephen's and the chambers in Downing street would be made to ring with their vociferous reproaches and yet sir to this situation is that portion of the United Kingdom" (meaning the said part of the said united kingdom) "reduced on the strength and vigour of which at this moment not only its own safety but as I have in my former letter stated the safety of the British empire and consequently I may assume the safety of Europe does entirely depend Against the truth of the description I have given of its rulers I may challenge the most daring supporter of the present government to produce me one single act in the lives of either of those truly great characters of the doctor" (meaning the said Philip earl of Hardwicke and John Lord Redesdale) "which can entitle them to claim one particle of trust or confidence from the public beyond the bounds and limits within which I have encircled their exploits On the chancery pleader" (meaning the said John Lord Redesdale) "perhaps I may have laid too great

a stress he is not of the first consequence though in a future letter I may perhaps point out to you the mischiefs which the intermeddling of such a man in matters out of the course of his practice may occasion but with respect to lord Hardwicke" (meaning the said Philip Earl of Hardwicke) "it may be replied that my challenge is unfair because it is impossible to justify his having been appointed to the government of Ireland by any instances of former political ability as the acceptance of his present office was his first political essay. What? Is he one of the tribe of the Hobarts Westmorelands and Camdens? Is he one of that tribe who have been sent over to us to be trained up here into politicians as they train the surgeons apprentices in the hospitals by setting them at first to bleed the pauper patients? Is this a time for a continuation of such wanton experiment? The gift of lord Hardwicke to us" (meaning thereby the appointment of the said Philip Earl of Hardwicke to the said place and office of lieutenant-general and governor-general of the said part of the said united kingdom) "at such a period cannot be compared to any thing else than the prank of Falstaff upon prince Hal at the battle of Shrewsbury when the knight handed over his pistol to the prince For indeed sir by the present to us of lord Hardwicke" (meaning the aforesaid appointment of the said Philip Earl of Hardwicke) "that sentence has been proved to us in a bloody truth which Falstaff said in a good-humoured jest here's 'what will sack a city'" To the great scandal and disgrace of the said Philip Earl of Hardwicke and John Lord Redesdale in contempt of our said lord the king and his laws to the evil example of all others in the like case offending and against the peace of our said lord the king his crown and dignity.

*5th Count.*—And the said attorney general of our said lord the king for our said lord the king further giveth the Court here to understand and be informed that the said William Cobbett so being such person as aforesaid and unlawfully and maliciously devising and intending to traduce defame and vilify and to bring into public hatred and contempt the said John Lord Redesdale so being such chancellor and privy counsellor as aforesaid afterwards to wit on the tenth day of December in the forty-fourth year of the reign of our said lord the king at Westminster in the county of Middlesex unlawfully and maliciously did print and publish and cause and procure to be printed and published a certain other scandalous and malicious libel containing therein divers scandalous and malicious matters and things of and concerning the said John Lord Redesdale and the conduct of the said John Lord Redesdale as such chancellor and privy counsellor as aforesaid by way of antithesis and contrast between the conduct which in and by the said last mentioned libel it is insinuated that the said John Lord Redesdale as such chancellor



and privy counsellor as aforesaid has adopted and pursued and the conduct which in and by the said last mentioned libel it is asserted that the right honourable Lloyd Lord Kenyon now deceased would have adopted and pursued (that is to say) in one part thereof according to the tenor and effect following that is to say "Instead of calling him (meaning the said late Lloyd lord Kenyon) to the high station which he so ably filled had it pleased his majesty to bless the western neighbours of Cambricus" (meaning the people of the said part of the said United kingdom) "who certainly owe the honest and warm-hearted principality no ill-will with Lord Kenyon" (meaning the said late Lloyd Lord Kenyon) "for their chancellor I can very well conceive what lord Kenyon" (meaning the said late Lloyd Lord Kenyon) "in such a situation would have done and also what he would not have done From a rare modesty of nature or from a rare precision of self-knowledge Lord Kenyon would have acted with reserve and circumspection on his arrival in a country with the moral qualities of the inhabitants of which and with their persons manners and individual characters and connexions he must have been utterly unacquainted In such a country torn with domestic sedition and treason threatened with foreign invasion and acting since the union under an untried constitution if doctor Addington had required that lord Kenyon should direct a Cambridgeshire earl" (meaning the said Philip Earl of Hardwicke) "in all his councils lord Kenyon would as soon at the desire of lord St. Vincent have undertaken to pilot a line of battle ship through the Needles Particularly the integrity of lord Kenyon would have shrunk from such an undertaking if a condition had been added to it that no one nobleman or gentleman who possessed any rank estate or connexion in the country should upon any account be consulted His pride would have spurned at the undertaking if he were told that to the Cambridgeshire earl" (meaning the said Philip Earl of Hardwicke) "and himself in the cares of government a clerk in the secretary's office and a couple of lawyers without political habits political information or honourable connexion were to be joined as assessors and to be the only assessors And lord Kenyon's pride and integrity would have both joined in preventing him from being himself the instrument of introducing such men into a cabinet of government If any one man could be found of whom a young but unhappy victim of the justly offended laws of his country had in the moment of his conviction and sentence uttered the following apostrophe—"That viper! whom my father nourished? 'He it was from whose lips I first imbibed 'those principles and doctrines which now by 'their effects drag me to my grave and he it 'is who is now brought forward as my prosecutor and who by an unheard-of exercise of 'the prerogative has wantonly lashed with a 'speech to evidence the dying son of his

'former friend when that dying son had produced no evidence had made no defence but 'on the contrary had acknowledged the charge 'and had submitted to his fate"—Lord Kenyon would have turned with horror from such a scene in which although guilt was in one part to be punished yet in the whole drama justice was confounded humanity outraged and loyalty insulted Of lord Kenyon therefore (Cambricus must well know) it never could have been believed that he himself would lead such a character forward introduce him to the favour of a deceived sovereign clothe him in the robes and load him with the emoluments of office Lord Kenyon must have known that a noble duke for having toasted at a drunken club in a common tavern to a noisy rabble 'the sovereignty of the people' was struck by his majesty's command out of the privy council and deprived of all his offices both civil and military If therefore any man were to be found who not at a drunken club or to a brawling rabble but in a grave and high assembly not in the character of an inebriated toast-master but in that of a sober constitutional lawyer had insisted on the sovereignty of the people as a first principle of the English law and had declared that by law an appeal lay from the decision of the tellers of the houses of parliament to that of the 'tellers of the nation' and that if a particular law were disagreeable to the people however it might have been enacted with all royal and parliamentary solemnity nevertheless it was not binding and the people by the general law were exempted from obedience to such a particular law because the people were the supreme and ultimate judges of what was for their own benefit Lord Kenyon if he had been chancellor in any kingdom in Europe would have shrunk from recommending any such man to the favour of a monarch while there yet remained a shadow of monarchy visible in the world"—And in another part thereof according to the tenor and effect following that is to say "It was said of lord Kenyon that he loved money If so he loved his own money only and not the money of any other man Lord Kenyon therefore as chancellor never would have made any rule or order by the effects of which the secretary of a master of the rolls would be deprived of all fees for the purpose of throwing all those fees into the hands of the secretary to the chancellor the better to enable that secretary to discharge the pension of some unknown annuitant on his official profits" And in another part thereof according to the tenor and effect following that is to say "The professional pride and inborn honour of lord Kenyon" (meaning the said late Lloyd lord Kenyon) "would never have suffered him to enter into a combination to sap by underhand means the independence of his brethren the judges he never would have suffered the great seal in his hands to be used for the purpose of garbling the bench in order to gratify those who might be contented pub-



licly to eulogize that government which privately they must have despised nor would he have employed any of his leisure in searching into offices for practices by which he might harass the domestic arrangements of others, whose pride and whose integrity would not bend to his views and thus double the vigour of his attack, by practising on the hopes of some and endeavouring to work upon the fears of others" To the great scandal and disgrace of the said John lord Redesdale in contempt of our said lord the king and his laws to the evil example of all others in the like case offending and against the peace of our said lord the king his crown and dignity.

6th Count.—And the said attorney-general of our said lord the king for our said lord the king further giveth the Court here to understand and be informed that the said William Cobbett so being such person as aforesaid and again unlawfully and maliciously devising and intending to traduce defame and vilify the said John lord Redesdale so being such chancellor as aforesaid afterwards to wit on the same day and year last aforesaid at Westminster aforesaid in the county of Middlesex unlawfully and maliciously did print and publish and cause and procure to be printed and published a certain other scandalous and malicious libel containing therein among other things divers scandalous and malicious matters and things of and concerning the said John lord Redesdale and the conduct of the said John lord Redesdale as such chancellor by way of antithesis and contrast between the conduct which in and by the said last mentioned libel it is insinuated that the said John lord Redesdale as such chancellor and privy counsellor as aforesaid had adopted and pursued and the conduct which in and by the said last mentioned libel it is asserted that the said lord Kenyon would have adopted and pursued that is to say in one part thereof according to the tenor and effect following (that is to say) "It was said of lord Kenyon that he loved money if so he loved his own money only and not the money of any other man lord Kenyon therefore as chancellor never would have made any rule or order by the effects of which the secretary of a master of the rolls would be deprived of all fees for the purpose of throwing all those fees into the hands of the secretary to the chancellor the better to enable that secretary to discharge the pension of some unknown annuitant on his official profits" (meaning and insinuating thereby and intending to cause it to be believed that the said John lord Redesdale as such chancellor as aforesaid had wickedly and corruptly made an order by which the secretary of the master of the rolls of the said part of the said United Kingdom would be deprived of his fees for the purpose of throwing the same fees into the hands of the secretary of himself the said John lord Redesdale to enable his said secretary to discharge the pension of some person

receiving an annuity out of the official profits of his said secretary)—And in another part thereof according to the tenor and effect following (that is to say) "The professional pride and the inborn honour of lord Kenyon" (meaning the said late Lloyd lord Kenyon) "would never have suffered him to enter into a combination to sap by underhand means the independence of his brethren the judges" (meaning and insinuating thereby and intending to cause it to be believed that the said John lord Redesdale as such chancellor as aforesaid had entered into a combination to sap by underhand means the independence of the judges of the said part of the said United Kingdom) "he never would have suffered the great seal in his hands to be used for the purpose of garbling the bench, in order to gratify those who might be contented publicly to eulogize that government which privately they must have despised" (meaning and insinuating thereby and intending to cause it to be believed that the said John lord Redesdale as such chancellor as aforesaid had suffered the great seal of the said part of the said United Kingdom to be used for the purpose of garbling the bench of judges of the said part of the said United Kingdom in order to gratify those who would publicly eulogize the government of the said part of the said United Kingdom, which they must privately have despised) "nor would he have employed any of his leisure in searching into offices for practices by which he might harass the domestic arrangements of others whose pride and whose integrity would not bend to his views and thus double the vigour of his attack by practising on the hopes of some and endeavouring to work upon the fears of others" (meaning and insinuating thereby and intending to cause it to be believed that the said John lord Redesdale had searched into offices for practices by which he might harass the domestic arrangements of other persons whose pride and integrity would not bend to his views To the great scandal and disgrace of the said John lord Redesdale in contempt of our said lord the king and his laws to the evil example of all others in the like case offending and against the peace of our said lord the king his crown and dignity Whereupon the said attorney-general of our said lord the king who for our said lord the king in this behalf prosecuteth for our said lord the king prayeth the consideration of the Court here in the premises and that due process of law may be awarded against him the said William Cobbett in this behalf to make him answer to our said lord the king touching and concerning the premises aforesaid)—Wherefore the sheriff of the said county of Middlesex was commanded that he should not forbear by reason of any liberty in his bailiwick but that he should cause him to come to answer to our said lord the king concerning the premises aforesaid And now (that is to say) on



Wednesday next after fifteen days from the feast day of Easter in this same term before our said lord the king at Westminster comes the said William Cobbett by Peter Belt his clerk in court and having heard the said information read he saith that he is not guilty thereof and hereupon he putteth himself upon the country and the said attorney-general of our said lord the king who for our said lord the king in this behalf prosecuteth doth the like. Therefore &c.

After the information had been gone through, the Attorney-general addressed the Court and Jury as follows :

My Lord, and Gentlemen of the Jury;—As I am upon all occasions very much disinclined to take up the valuable time of the Court, I sincerely lament, that, on the present occasion, I have been obliged to lengthen this record, by inserting in it so many passages; for I am persuaded, that nothing is more conducive to justice, than that it should be confined within as narrow a compass as possible. But, gentlemen, it appeared to me impossible, that you, who are to pass your verdict of guilty, or not guilty, on the defendant in the case before you; or that the Court who, if you find him guilty, will hereafter have to apportion his punishment, should be able to form any correct opinion of the true character of the libels, of their real malignity, of the mischievous intention of the author of them, and of the low means by which he endeavoured to effect his purpose, without my laying before you such samples and passages, as would enable you to perceive, that I was not prosecuting a man for an inadvertent or an hasty expression, nor for the fair exercise of his profession as a public writer, who, in the hurry of the moment, had trespassed a little beyond the line of decency and propriety; but, on the contrary, that it was directed against one, who, in a cool, systematic and deliberate manner, had endeavoured to degrade and vilify the whole administration of his majesty's government in Ireland. It is not so much a libel upon my lord Hardwicke, it is not so much a libel upon my lord Redesdale, it is not so much a libel upon Mr. Justice Osborne or Mr. Secretary Marsden, merely for the purpose of traducing and vilifying those characters; but those characters are traduced and vilified, for the purpose of bringing the whole government of Ireland into contempt, and exposing it to the scorn and execration of the people of that country.

When I show to you, gentlemen, as I shortly shall do, that this is the real aim and bent of the whole of these libels, I trust it will not be imputed to me, that I am trespassing, in any degree, upon the liberty of the press, or upon that fair and free discussion of the conduct of public men and measures, which is the distinguished privilege of every Englishman, which has been abundantly enjoyed since I have had the honour to occupy

the situation I hold, and of which Mr. Cobbett, I think, will not be the first man to complain of the violation.—You will also consider, gentlemen, not only the libellous language made use of, but the critical moment at which that language was used: at a moment when the minds of the people of Ireland were in a feverish and distempered state, and liable to be driven to a paroxysm of madness by the slightest impulse. And the taking advantage of a moment so perilous, tends powerfully to establish, that the most base and destructive motive actuated the mind of the defendant. Had the libel not been of that sweeping nature as to involve the whole political government of Ireland; had it simply been directed against the noble earl at the head of that government; or against the other dignified characters who are the object of the defendant's slander; those dignified characters would, in all probability, have treated it with silent disdain. But they considered, that they had been made the medium of aspersions, which, if not animadverted upon, might be attended with consequences dangerous to the happiness of a large and valuable portion of his majesty's subjects, and dangerous to the very existence of the British government in that part of the United Kingdom.

Gentlemen, you must be well aware, that the character of every government depends greatly upon the estimation in which those are held by whom it is conducted—both those who plan the measures, and those in an inferior situation, by whom such measures are carried into execution; and if there is any one thing more than another, that can recommend a government to the love and affection of the people, it is the purity and integrity of the administration of justice, and of those who deal it out for the protection of their lives and their property. Yet, gentlemen, you will find, that in all these important particulars, the government of Ireland is attacked. My lord Hardwicke, as the head of that government is treated as a person wholly incapable of performing the public functions of his office, and represented as “a very eminent feeder of sheep in Cambridgeshire.” My lord Redesdale, who is placed so high in the councils of the state, is denominated “a very able and strong-built chancery pleader from Lincoln's-Inn.” Mr. Secretary Marsden is described as “a corrupt, unprincipled, rapacious plunderer, preying upon the property of the state.” And Mr. Justice Osborne is held forth as, “the most corrupt instrument of a debased and degraded government, lending himself as a screen to conceal them from the disgrace their actions would naturally bring upon them.”

Gentlemen, the first passage in the libel to which I shall draw your attention forms part of a letter on the affairs of Ireland, signed by the name of Juverna, and was published in



"Cobbett's Political Register," of the 5th of November last. The author takes occasion, by the well known fable of the Trojan horse, to typify the whole Irish government. My lord Hardwicke is described under the appellation of the "wooden representative of wisdom;" thereby comparing his excellency to the wooden horse recorded in the history of the siege of Troy. But, perhaps, it will be best to read the several passages to you, and make my comments upon them as I proceed.—The first passage begins thus: "*Equo ne credite Teucris*, was the advice which, in a dangerous moment, Laocoon gave to the Trojans. It will be remembered that the *equus*, against which that sagacious adviser cautioned his countrymen, was a WOODEN one. His countrymen did not regard Laocoon. They received the *wooden* representative of wisdom. They approached it as if it possessed authority and power. Its *wooden* head towered above their houses. But though the machine itself was innoxious wood, the credulous Trojans found its hollow head and exalted sides were nothing less than receptacles for greedy speculators and blood-thirsty assassins. The ingenious author of the story did not mean to confine the lesson, which it inculcates to the tale of Troy alone. He meant to take advantage of that easy metaphorical expression, which, by the common assent of mankind has moulded itself into most languages, and by which a certain species of head (which the moderns, by various moral experiments, have ascertained to be a non-conductor of ideas) has been denominated a *wooden* head. He meant to caution future nations not to put trust or confidence in the apparent innocence of any such wooden instrument; and not to suffer themselves to be led to exalt it into consequence, or to pay it any respect. He meant to tell them that any people, who submitted to be governed by a *wooden* head, would not find their security in its supposed innoxiousness, as its hollowness would soon be occupied by instruments of mischief." Now, gentlemen, is this or is it not intended to apply to my lord Hardwicke? The next passage begins thus: "When I found, sir, this portion of the kingdom overwhelmed by such consequences to our property as the rapacity of Mr. Marsden and his friends, and such consequences to our lives as the pikes of Mr. Emmet and his friends have lately produced: When I could trace all these evils as the inevitable issue from the head and body of such a government as that of lord Hardwicke, and I am told of his *innocuousness* and his *firmness*. I still reply the story of the *wooden* horse, and I shall still, notwithstanding the fate of Laocoon, raise my voice to my countrymen and cry, *Equo ne credite Teucris*." Is it possible, gentlemen, that the passages I have read to you can bear any other interpre-

tation than that which I have put upon them? He then proceeds in a style of flippancy, that he does not mean to state literally, that the head of his excellency was absolutely built of timber. But I will give you the gentleman's own words: "not, sir, that I would be understood literally. I do not mean to assert that the head of my lord Hardwicke is absolutely built of timber. My application, like that of the original author of the tale, is only metaphorical. Yet, at the same time, I cannot avoid suspecting that if the head of his excellency were submitted to the analysis of any such investigator of nature as Lavoisier, it would be found to contain a superabundant portion of particles of a very ligneous tendency." Now, gentlemen, is there any thing in all this that can be called a fair and liberal description of the conduct of a public character? He then goes on to say, "this sir, is the lord Harwicke of doctor Addington, against whose government 'not a murmur of complaint has been heard'—while our property has been subject to the plunder of his clerks, and our persons have been exposed to the pikes of the rebels. Still, however, the innocence of lord Hardwicke, as to any intention of mischief, is held forth. But, I reply in the words of Mr. Burke: 'they who truly mean well must be fearful of acting ill. Delusive good intention is no excuse for presumption.' And I may add in my own words, that the government of a harmless man is not, therefore, a harmless government." Gentlemen, I have already adverted to the indecency and flippancy of many expressions made use of in this libel. If this libeller had been hurried away with the temptation of saying a flippant thing, I should not have thought it a subject of criminal prosecution. But, in the case before you, it is criminal, as indicating the spirit with which it was written, and as being descriptive of the mind of the man at the time he was making them. I would not, however, be understood to say, that even in the warmth of discussion upon public men and public measures, decency of language ought not to be preserved, and that any deviation therefrom is not punishable. What I mean in this case is, that I should have thought it beneath the dignity of these high characters to have taken notice of any personal abuse, if that personal abuse had not been connected with a systematic attack upon the whole of the Irish government. I do not mean to say, that the describing such a man as Mr. Addington, by the epithet of doctor Addington is degrading to him, nor that I would advise that such an epithet should become the subject of a prosecution in a court of justice; but, surely, no one who has the least liberality of feeling, or the least sense of decency, could think it becoming to taunt such a gentleman as Mr. Addington: a gentleman who, the more he is known, the more his character will be admired. For my part, I feel no sympathy



with those who think there is any wit in such titles. Mr. Addington is the son of a man who most ably and skilfully practised in a liberal profession; who, by his talents, became justly eminent in that profession; and whose son has raised himself by his great abilities to one of the highest offices in this country. I again say, that for any publication calling Mr. Addington "Doctor Addington," or for any flippancy of that nature, standing by itself, I should think it beneath the dignity of that right honourable gentleman, to make it the subject of a prosecution; but I also say, that when you see an epithet of this nature introduced, it does show the spirit with which the libel was published, and that it was a systematic attack upon the whole government of Ireland, by bringing into contempt and ridicule the persons placed by his majesty at the head of that government.

The next passage runs thus: "inquiry and research are the duty and the resource of the ignorant, and therefore I did inquire. The result of no small attention bestowed in this pursuit was, that I discovered of our viceroy, that he was in rank an earl: in manners a gentleman; in morals a good father and a kind husband; and that he had a good library in St. James's-square. Here I should have been for ever stopped, if I had not by accident, met with one Mr. Lindsay, a Scotch parson, since become (and I am sure it must be by Divine Providence, for it would be impossible to account for it by secondary causes) bishop of Killaloe in Ireland. From this Mr. Lindsay I further learned, that my lord Hardwicke was celebrated for understanding the modern method of fattening a sheep as well as any man in Cambridgeshire." Now, gentlemen, I may be asked, if calling my lord Hardwicke the most distinguished character that can belong to a man—"in morals a good father and kind husband," having "a good library in St. James's-square, and being attached to agricultural pursuits,"—I may be asked, I say, whether I mean to consider all these good qualities as being a libel on my lord Hardwicke? Yes, gentlemen, I do—WITH THE TEXT BY WHICH THEY ARE ACCOMPANIED. Qualities like these ought to have made the libeller pause before he ventured to attack such a character. He tells you my lord Hardwicke has "a good library in St. James's-square," and that he is "celebrated for understanding the modern method of fattening a sheep as well as any man in Cambridgeshire!" Gentlemen, you must close your eyes, you must shut your understandings, if you do not see that these amiable qualities are attributed to lord Hardwicke, with a slanderous, with an ill-natured meaning.—With respect to this fattener of sheep in Cambridgeshire, he goes on to say: "while I have been writing, sir, a map of the West Indies happened to hang before me. My eye wandered, I know not

why, upon it, and fixed upon one of those little islands which have been lately, by the British troops, redeemed from the *capitulation* of lord Cornwallis at Amiens. Give me leave to suppose, that, in the course of a few years, one of those little islands should become highly cultivated, and that a considerable portion of British property became vested in its land and in its trade. Suppose that, by some unfortunate combination of events, this little island should be deeply shaken by insurrection within, and should be loudly menaced by invasion from without. Suppose a powerful fleet of the enemies of the British name lay to windward, ready filled with troops for landing, while a desperate band of ruffians were secretly arming in its bosom, ready to aid that landing of a foreign enemy." (Alluding certainly to the state of Ireland). "Suppose," he continues, "in this distress, a committee of West India proprietors, whose money had been vested in this little island, should apply to the doctor Addington for assistance: and suppose he were to rise up and desire them to quiet their apprehensions, for *that he had entrusted the care of their island to a very eminent sheep-feeder from Cambridgeshire, who was to be assisted in all his councils by a very able and strong-built chancery pleader from Lincoln's Inn.* Give me leave to ask you, sir, who know the city much better than I can pretend to do, what would a sugar committee, issuing from one of their coffee-houses, say to such an answer from a British minister? Why, sir, the walls of St. Stephen's, and the chambers in Downing-street, would be made to ring with their vociferous reproaches. And yet, sir, to this situation is that portion of the United Kingdom reduced; on the strength and vigour of which, at this moment, not only its own safety, but, as I have, in my former letter stated, the safety of the British empire, and, consequently, I may assume the safety of Europe does entirely depend. Against the truth of the description I have given of its rulers, I may challenge the most daring supporter of the present government to produce me one single act in the lives of either of those *truly great characters* of the doctor, which can entitle them to claim one particle of trust or confidence from the public, beyond the bounds and limits, within which I have encircled their exploits."

Now, gentlemen, will any man believe that there is any degree of candour in saying, that all that has been done by the British government for Ireland, is to send them a sheep-feeder from Cambridgeshire, and a strong-built chancery pleader from Lincoln's Inn, when I tell you that at the moment when the government of Ireland is so abominably libelled, that country is defended, externally and internally, by fleets and by armies, beyond what it ever has been in any former period of its history? Nay, gentlemen, I will go still farther. I will venture to assert, that Great Britain never was possessed of an army



so well disciplined, so well appointed, so well regulated, and so well commanded as that now in Ireland. And yet this libeller represents, that all that has been done for the people of Ireland, is to send them a sheep-feeder from Cambridgeshire, and a strong-built chancery-pleader from Lincoln's Inn! Is not this telling the people of Ireland that they must expect nothing from their own government, and encouraging them to look to some other for protection?—He next goes on to say: On the chancery pleader, perhaps, I may have laid too great a stress—he is not of the first consequence—though, in a future letter, I may, perhaps, point out to you the mischiefs which the intermeddling of such a man in matters out of the course of his *practice* may occasion. But, with respect to lord Hardwicke, it may be replied, that my challenge is unfair, because it is impossible to justify his having been appointed to the government of Ireland by any instance of *former* political ability, as the acceptance of his present office was his *first* political essay. What! Is he one of the tribe of the Hobarts, Westmorelands, and Camdens? Is he one of that tribe, who have been sent over to us to be trained up here into politicians, as they train the surgeons apprentices in the hospitals, by setting them at first to bleed the pauper patients? Is this a time for a continuation of such wanton experiment? The gift of lord Hardwicke to us, at such a period, cannot be compared to any thing else than the prank of Falstaff upon prince Hal at the battle of Shrewsbury, when the knight handed over his *Pistol* to the prince. For indeed, sir, by the present to us of lord Hardwicke, that sentence has been proved to us in a bloody truth, which Falstaff said in a good-humoured jest—‘here’s what will sack a city.’” Now, who are the Hobarts, the Westmorelands, and the Camdens to whom this libeller alludes? I will tell you, gentlemen. They are great and deservedly illustrious characters who formerly occupied the highest situations in the government of Ireland. And thus you will perceive, that this is not only a libel upon the Irish government of the present day, but a libel upon former governments. With respect to my lord Hardwicke, I will venture to say, that there never was a nobleman who, by his wise administration of justice, and his amiable and conciliatory manners, effected more for the tranquillity and happiness of Ireland than that nobleman has done. Totally to prevent sudden ebullitions of discontent and disaffection, is, perhaps, beyond the reach of any talents; but, to crush rebellion in its birth, to stifle the monster as soon as it appeared, was the achievement of my lord Hardwicke. He put down insurrection, without offering violence to the constitution, by the mild but firm operation of the established law. The rebellious were punished, and the loyal were made secure, without infringing on the trial by jury, or on the general peace of the country; and

the necessary and wholesome rigour of the law did not interrupt the tranquillity of the nation at large, which feels itself grateful and happy under the mild, the temperate, the firm, and the conciliatory government of the amiable nobleman, whose character is so scandalously aspersed in this abominable libel.

I shall now proceed to that part of the libel which relates to Mr. Justice Osborne, and which forms the second libel stated on the record. And here, gentlemen, you will see that there is an attempt, by means of a thin covering, to impute to that learned judge improper conduct, in the course of a charge which he delivered to the grand jury for the county of Antrim. The libeller wraps up his poison in the shape of a dry narrative of facts. He begins thus: “What I have now to touch upon must be done with a delicate hand. I will confine myself to a bare narrative of facts, and will not presume to give any opinion. As soon as the government had fully recovered its recollection, a commission, directed to five of the judges, issued for the trial of those rebels who had been arrested for treason committed in the county and city of Dublin. This commission, having issued while the judges were on circuit, was filled up (and very properly filled up) with the names of the five *senior* of those judges who were then on the circuits, which were likely to terminate at the earliest period of time. Such was the reason given by government for the particular selection of the judges named in that commission, and it certainly was a good reason. In some time after this commission had been sitting, it became necessary to issue a new commission for the trial of rebels in the shires of Antrim and of Down. In the appointment of this second commission, the principle which directed the selection in the first, was not adhered to. On the contrary, the *junior* judge of the twelve was very anxiously culled out, and placed in this new commission, over the heads of a number of his seniors. This, however, could not, and ought not to have given offence to any of those senior judges, because, whatever opinion of them the government may have manifested in such an appointment, the opinion of the present government upon such a subject (known to be influenced by motives very different from general justice) is too contemptible to have the slightest effect upon any of those learned judges in the public mind. The circumstance, therefore, was not at first attended to. There is published, in this city, a newspaper, called the Dublin Journal. It is, in general, conducted with good sense, loyalty, and a regard to truth; but, in particular deviations, it is known to be under the control and immediate direction of government. In that paper of the 20th of October last, a publication appeared, which purported to be a charge given by the *junior* judge above alluded to, to the grand jury of the county of



Antrim. In this place I beg now to declare, that I am far from attempting to assert, that the learned judge did pronounce any such charge; and when I speak of his charge, I request you will understand I mean only the newspaper publication above-mentioned. In the newspaper publication the learned judge is made to tell the grand jury, that ‘through the *well-timed efforts* and strenuous exertions of a ‘wise and *ENERGETIC* government, &c. the ‘progress of such crimes as lately disgraced ‘this country had been effectually checked.’ If the learned justice did make any such assertion (which I am far from supposing), with what amazement the grand jury must have received such a broadside, poured upon the truth of the fact, I cannot, as I was not present, know: but I can very well imagine what the feelings of twenty-three well-informed gentlemen must have been. Their respect, and a thorough knowledge of their duty would necessarily keep them silent. But though men remain silent under the proper awe and control of a court of justice, their language only becomes more strenuous when that restraint is taken off, and they meet together in private confidence.” The libeller then proceeds to say: “but, sir, suggestion does not stop here. Men ask, how could (if the learned justice did make any such assertion) the learned justice be led to give credit to a position which contradicts the evidence of the senses of every man in the kingdom, who was present at, or knew any thing of the transaction? How could a learned judge be supposed to assert that, which no man in the kingdom would assert, unless he had some reasons of the same nature as those which prevailed on Mr. Marsden’s attorney-general, on the trials for high treason, to assert something of the same kind? Men, sir, couple the *extraordinary selection* of the learned justice from amongst his fellows, with the *extraordinary assertion* attributed to him in a government newspaper, and they ask, if he made that assertion, where did he get his information? Was he ever in Mr. Marsden’s audience-room since the night of the 23rd of July? What *passed* there? What were the pre-disposing causes which induced government to *select particularly* that learned justice? Could government have *foreseen* (and if so, by what faculty) that the learned justice would have given an instruction to the grand jury, so very useful and so very grateful to the government? What night telescope could have been applied to the eye of Mr. Marsden, which, through the dark womb of things unborn, could have enabled him to perceive through this little future star of praise, springing from the creative lips of the learned justice? Here, sir, decorum towards you and towards the public induces me to be silent as to other, and, perhaps, stronger observations. But I may, I believe add, what men also say, that if it were possible the ermined robe of the most awful attribute of his majesty

should have been wrapped round the acts of Mr. Marsden, in order to screen them from public disgrace, we might then look for another, but not less fatal end to our liberties and to our constitution than that which rebellion or invasion could produce. And in truth, they say, that except as to momentary effects, rebellion and invasion might be viewed with indifference, if it can be supposed, that the stained hands of a petty clerk had been washed in the very fountain of justice.” Thus, gentlemen, is Mr. Justice Osborne accused with having poured in a broadside upon the fact, meaning thereby, that that learned judge had been guilty of a falsehood. And then, with reference to Mr. Secretary Marsden, it proceeds to state, that rebellion and invasion were evils of less magnitude, than the ermined robe of his majesty being wrapped round a man, whose blood-stained hands had been washed in the very fountain of mercy. Now, gentlemen, is this or is it not, one of the most dangerous libels to the peace and tranquillity of Ireland, that could possibly have been published? And can there be expected any loyalty or any attachment in the people of that country, if such foul aspersions upon individual characters in the administration of justice be suffered to pass without the reprehension of the law?

The next point I come to, is, the libels upon my lord Redesdale. And here I cannot help saying, that it would have been an unpleasant part of my duty, had I been called on to prosecute for this alone. Not that there is not in this part of the publication, abundant matter for prosecution, but, personally, I should have found the task a very unpleasant one, on account of my known connexion with that noble lord. I shall, therefore, say of him less on that account; and less, I am inclined to believe, than any of my learned friends around me would have said of him, had it fallen to their lot to manage this prosecution. That noble lord is well known to all the bar in this country, and I leave it to that bar to feel for his character as it deserves to be regarded; but I am sure it will not be said, that because the chancellor of Ireland happens to be brother-in-law to the attorney-general of England, he is therefore to go unprotected. — Gentlemen, this is one of the most scandalous and abominable libels that ever came before an English jury. Is it possible that noble lord should have so far taken leave of his former character as to be guilty of the corruption with which he is here charged? The libel professes to draw a comparison between the late lord Kenyon and the present lord chancellor of Ireland, and under the artful pretext of showing us what my lord Kenyon would not have done, he pretty plainly insinuates what my lord Redesdale has done. The libeller introduces it in this way; “instead of calling him to the high station which



he so ably filled, had it pleased his majesty to bless the western neighbours of Cambricus\* (who certainly owe the honest and warm-hearted principality no ill will) with lord Kenyon for their chancellor; I can very well conceive what lord Kenyon, in such a situation, would have done, and also, what he would not have done. From a rare modesty of nature, or from a rare precision of self-knowledge, lord Kenyon would have acted with reserve and circumspection, on his arrival in a country, with the moral qualities of the inhabitants of which, and with their persons, manners, and individual characters and connexions, he must have been utterly unacquainted. In such a country, torn with domestic sedition and treason, threatened with foreign invasion, and acting, since the union, under an untried constitution, if doctor Ad-dington had required that lord Kenyon

\* In a preceding letter of Juverna the name of the first lord Kenyon was introduced by the writer, and produced some observations under the signature of Cambricus which are given below. In the letter from which the extract in the text is taken, Juverna took occasion to insert some high commendations of lord chief justice Kenyon, and in the next number of Cobbett's Political Register the letter bearing the signature of lord Kenyon appeared.

TO THE EDITOR.

November 7th, 1803.

Sir;—Having seen in your paper, in a letter from Ireland, signed Juverna, an attack on the character of a man who will long live revered in the memories of such as value integrity and religious virtue, I must beg leave to remark upon it very shortly, that even were the attack for political incapacity just, it ill becomes any man, who has a sense of the value of uprightness and religious zeal in a judge, whose chief object was ever to make the religion which he cherished and professed the rule and guide of his decisions, and to impress it on his hearers with an eloquence, because it arose from the heart, more irresistible than can be credited by those who never heard or knew not how to feel the value of such a character. As pride is, perhaps, an essential in the character of a statesman, it may not be inexpedient to hint, that in the character alluded to, it was a quality which did not exist. The writer of the Pursuits of Literature, and Juverna may please themselves with their acumen, in finding blots in characters however luminous, though the former, most handsomely, and to his honour, in private testified his respect to the character he only named to lower in his publication. But to the point. In public, the late most respectable chief justice always professed himself not to be a political man. Wit was a gift he never claimed. He felt as much as any man, the force of it in others,

should direct a Cambridgeshire Earl 'in ALL his councils,' lord Kenyon would as soon, at the desire of lord St. Vincent, have undertaken to pilot a line of battle ship through the Needles. Particularly, the integrity of lord Kenyon would have shrunk from such an undertaking, if a condition had been added to it that no one nobleman or gentleman who possessed any rank, estate, or connexion in the country, should upon any account be consulted. His pride would have spurned at the undertaking, if he were told, that to the Cambridgeshire earl and himself, in the cares of government, a clerk in the secretary's office, and a couple of lawyers without political habits, political information or honourable connexion, were to be joined as assessors, and to be the only assessors. And lord Kenyon's pride and integrity would have both joined in preventing him from being, himself, the instrument of introducing such men into a

and the tenacity of a memory nearly self-taught in classical and latin writers would occasionally from its fulness produce quotations, which, however uninformative critical wisdom may be disposed to consider them, were surely harmless, and, to those who have pleasure in witnessing the attainments of the human mind, undoubtedly were pleasing. As to politics, except in the instance of the Regency, to support the cause of his virtuous and beloved sovereign, he rarely ever meddled with them, conceiving the situation of judge to be one which claimed his first attention; the strict application of which, at last, destroyed a life, which the law generally acknowledged, and the public, finally, will find, a public calamity. I did not think I should have intruded so long, but the respect amounting to filial reverence which I delight in bearing to the memory of one, so deservedly claiming it, calls for this from me. Skilful and instructive as I acknowledge the writings of Juverna to be, I am sorry to have my respect much lessened for the author, from his unnecessary attack on a virtuous character, now unhappily no more. He should remember that at last without virtue the wisdom of the wise is vain.—I am your humble servant,

CAMBRICUS.

TO THE EDITOR.

Gredington, December 12th, 1803.

Sir;—Having before troubled you under the signature of Cambricus, on account of the apparently wilful attack on my most honoured father's memory, I think it right to trouble you to insert this, to state my perfect satisfaction at the amends, which, for his own character's sake, and that of the public, I am happy to see a writer of such powers and zeal as Juverna has so handsomely made. On that point alone I will trouble you; and am glad to use the opportunity of signing myself your sincere admirer and humble servant,

KENYON.



cabinet of government. If any one man could be found, of whom a young but unhappy victim of the justly offended laws of his country, had, in the moment of his conviction and sentence, uttered the following apostrophe—  
 ‘That viper! whom my father nourished!  
 ‘He it was from whose lips I first imbibed  
 ‘those principles and doctrines, which now  
 ‘by their effects drag me to my grave; and  
 ‘he it is who is now brought forward as my  
 ‘prosecutor, and who by an unheard of exercise of the prerogative, has wantonly  
 ‘lashed, with a speech to evidence, the dying  
 ‘son of his former friend, when that dying  
 ‘son had produced no evidence, had made no  
 ‘defence, but, on the contrary, had acknowledged the charge, and had submitted to his  
 ‘fate.’—Lord Kenyon would have turned with horror from such a scene, in which, although guilt was in one part to be punished, yet, in the whole drama, justice was confounded, humanity outraged, and loyalty insulted.”—Gentlemen, this passage alludes, as I shall presently show you, to Mr. Plunkett, the present solicitor-general of Ireland.\* It charges my lord Redesdale with having improperly introduced that gentleman into the government of Ireland, and accuses the said solicitor-general with having made an improper speech on the trial of Mr. Emmet for high treason. As to the slander upon the solicitor-general of Ireland, that learned gentleman has not made it the subject of a criminal charge, but has commenced a civil prosecution against Mr. Cobbett,† thereby affording him an opportunity of justifying and proving the truth of what he has published. Gentlemen, the whole of this passage is a most gross libel upon my lord Redesdale, and not merely upon my lord Redesdale, but upon the whole Irish government. He says, that “lord Kenyon would have turned with horror from such a scene.” What scene? The scene of the trial of Mr. Emmet, that traitor who was the heart and fountain of that bloody rebellion. Yet he says, that lord Kenyon would have turned with horror from such a scene! Gentlemen, am I to be called upon to make any comments on a passage so infamous as this is?—He goes on to say; “of lord Kenyon, therefore (Cambricus must well know), it never could have been believed, that he himself would lead such a character forward, introduce him to the favour of a deceived sovereign, clothe him in robes, and load him with the emoluments of office. Lord Kenyon must have known that a noble duke for having toasted at a drunken club, in a common tavern, to a noisy rabble, ‘the sovereignty of the people,’ was struck by his majesty’s command out of the privy council, and deprived of all his offices both civil and military. If, therefore, any man were to be found, who, not at a

drunken club, or to a brawling rabble, but in a grave and high assembly; not in the character of an inebriated toast-master, but in that of a sober constitutional lawyer, had insisted on *the sovereignty of the people* as a first principle of the English law; and had declared, that by law an appeal lay from the decision of the tellers of the Houses of Parliament, to that of the ‘*tellers of the nation* ;’ and, that if a particular law were disagreeable to the people, however it might have been enacted with all royal and parliamentary solemnity, nevertheless, it was not binding, and the people by the general law were exempted from obedience to such a particular law, because the people were the supreme and ultimate judges of what was for their own benefit.—Lord Kenyon, if he had been chancellor in any kingdom in Europe, would have shrunk from recommending any such man to the favour of a monarch, while there yet remained a shadow of monarchy visible in the world.” Thereby intimating, that, knowing the character of that gentleman, my lord Redesdale had, nevertheless, recommended him to the favour of the sovereign, and to the situation he holds under the government of Ireland.

But, gentlemen, the libel does not stop here; it goes on to say: “it was said of lord Kenyon that he loved money. If so, he loved his own money only, and not the money of any other man. Lord Kenyon therefore, as chancellor, never would have made any rule or order by the effects of which, the secretary of a master of the rolls would be deprived of all fees, for the purpose of throwing all those fees into the hands of the secretary to the chancellor, the better to enable that secretary to discharge the pension of some unknown annuitant on his official profits.” Thereby imputing to lord Redesdale, that he loved the money of other men, and that he corruptly ordered the fees of the secretary of the master of the rolls to be given to his own secretary, the better to enable him to pay a pension to an unknown annuitant; when, in truth, lord Redesdale did not so much as appoint his own secretary, but continued the gentleman who filled that office under his predecessor, my lord Clare.—He goes on: “the professional pride and the inborn honour of lord Kenyon, would never have suffered him to enter into a combination to sap, by underhand means, the independence of his brethren the judges. He never would have suffered the great seal in his hands to be used for the purpose of garbling the bench, in order to gratify those who might be contented publicly to eulogise that government, which privately they must have despised.” Here, gentlemen, the mask is thrown aside—“Nor would he have employed any of his leisure in searching into offices for practices, by which he might harass the domestic arrangements of others, whose pride and whose integrity would not bend to his views; and thus double the

\* See Emmet’s case, vol. 28, p. 1158.

† See the next case.



vigour of his attack by practising on the hopes of some, and endeavouring to work upon the fears of others." Here, he directly charges lord Redesdale with employing his leisure in searching into offices for practices, by which he might harass the domestic arrangements of those whose pride and integrity would not bend to his views. And I ask you, gentlemen, whether crimes in a judge, more gross or more abominable than those thus attributed to my lord Redesdale, could possibly have an existence?—Gentlemen, such are the passages which I have selected for your consideration, from a mass of others equally libellous. I have taken them from the third and fourth letters of *Juvena*, though any one letter of the series would have shown you the libellous spirit with which they were written. I am not at all aware what sort of defence it is intended to be set up for Mr. Cobbett. Perhaps it may be said, that the defendant was only concerned in the publication, and not in the composition of this libel. But, gentlemen, Mr. Cobbett must either be the author, or the vehicle of the libel of another man, and he that makes public the libel of another man, is as guilty as if he were the writer of it himself. The inclination of my opinion is, that Mr. Cobbett is not the author; but this is no mitigation of his guilt. I have told you that I have selected the passages from two letters published at different periods; and I have been induced to do so, in order to convince you, that the publication was not a careless act, but that the crime was repeated with the utmost deliberation. Nay, gentlemen, I may go farther, and tell you, that the malice of Mr. Cobbett in these publications has been manifested in an uncommon degree; for since his attention has been called to this subject, and even down to Tuesday last, Mr. Cobbett, finding that the public curiosity was very much turned to these libels, and that it was a lucrative business, has suffered the sale of these very publications which are the subject of this prosecution, uninterruptedly to go on. I, therefore, apprehend, that no excuse can be found for Mr. Cobbett in this case; nor can he be called, with any propriety, the mere editor of these libels. If he is the author, every one will admit that he must be answerable for them in point of law. And if he is not the author, he is equally answerable, or rather more so, in point of morals, for being the publisher, under the particular circumstances of the case.

Gentlemen, Mr. Cobbett either is, or conceives himself to be, the ablest, best and most consummate politician, and the most pure and disinterested editor of a newspaper whom the world ever saw. He either is, or believes himself, beyond the ordinary rank of mankind, and that therefore, there should be considerable indulgence shown to a man of this description for thinking meanly of those who grovel so much below him: but the difficulty is in justifying him in holding forth others to

contempt, because they are not equal to himself. Gentlemen, who is Mr. Cobbett? Is he a man of family in this country? Is he a man writing purely from motives of patriotism? *Quis homo hic est? Quo patre natus?* He seems to imagine himself a species of censor, who, elevated to the solemn seat of judgment, is to deal about his decisions for the instruction of mankind. He casts his eye downward, like the character represented by the poet of nature, from Dover cliff, and looks upon the inferior world below as pigmies beneath him. Perhaps, in the proud contemplation of his own abilities, he supposes he is not to submit to the laws and institutions adapted to the vulgar herd of society; but, gentlemen, whatever may be our inclination to forgive what comes from such a censor, I am afraid we must be content to consider him, in this court, as a common being, and to subject him to the usual restrictions which he will admit to be accommodated only to our inferior capacities.—Gentlemen, it is not easy to dive into another man's mind. But I will suppose a case, that these publications are the work of some person who imputes corrupt motives to government, because he himself was disappointed in a system of his own, and who libels government for corruption, when the absence of that corruption is the true cause of the complaint. Supposing, I say, this to be the case, what can be the excuse for such a man? What can be the excuse for slander originating in motives of this nature? I do not say that these publications do originate in such motives, because I cannot prove it. I wish I could; for, in that case, the prosecution certainly should not stop here.

#### EVIDENCE FOR THE PROSECUTION.

Mr. *Barry*, from the Stamp-office, produced the affidavit filed in that office, with the names of Cox and Baylis, as the printers, No. 75, Great Queen-street; R. Bagshaw, the publisher, Bow-street, Covent-garden; and William Cobbett, 15, Duke-street, St. Catherine's, Westminster, as the sole proprietor of the *Weekly Political Register*.—Mr. Adam, for the defendant, took two objections to this part of the evidence; the one was, that the hand-writing of Mr. Cobbett was not proved, and the other that the place of his residence was not properly described, there being no such situation as appeared on the face of the affidavit. The proof was immediately given by the witness, who said he saw the affidavit signed, and the latter objection was over-ruled by his lordship, this being the description given of his residence by the defendant himself.

Mr. *Henry Fallowfield* was then called to produce the letters patent under which lord Hardwicke, and the other great officers were appointed, when the witness was stopped by the admission of the defendant of the offices being so held by the persons so named in the information.

Mr. *Walter Prober*, and Mr. *James Elking-*



ton were examined by Mr. Dallas and Mr. Abbott, and gave testimony to the purchase of the Weekly Political Register, containing these libels, at Mr. Bagshaw's, in Bow-street, and at Mr. Budd's, another agent of the defendant, at the Crown and Mitre, Pall-mall.

Mr. Adam.—I hope, my lord, I shall be permitted to read parts from the whole correspondence, not only the letters on the affairs of Ireland, Nos. 3 and 4, quoted in the information, but the whole series of No. 1 to No. 5.

Lord *Ellenborough*.—You cannot read them unless they are virtually incorporated by some reference.

Mr. *Lowten* now read in evidence the several passages which will be found in the information.

Mr. *Crowe* sworn.—Examined by  
Mr. *Erskine*.

Whom do you understand by the Cambridgeshire earl?—Lord Hardwicke.

And whom by the chancery pleader?—Lord Redesdale.

And whom by the junior judge?—Mr. Justice Osborne.

And whom by the clerk in the secretary's office?—Mr. Marsden.

#### DEFENCE.

Mr. *Adam*.—My Lord, and Gentlemen of the Jury. I have an anxious duty to discharge; a duty which presses upon me the more heavily, from the circumstance of my not being accustomed, so much as some of my learned friends are, to business of this nature, and from my not having practised, of late years, so much at this bar as in other courts. And the anxiety I feel has, in no degree, been diminished by the manner in which the prosecution has been conducted, the way in which so many honourable characters have been introduced and spoken of, and, above all, by the character and situation of the person who has entrusted to me the care of his defence.

Gentlemen, I am sure I shall have your serious attention, when I state to you, that I stand here in behalf of a person, whom, though he is accused of a serious crime, I can describe to you, as a good father, an excellent husband, a virtuous subject of the king, and one who has uniformly, in all his conduct, public and private, in this country and abroad, endeavoured to uphold the true constitution of England, as by law established—a person who is ardently attached to the monarchical frame of this government, and who has repeatedly stepped forward, to the certain loss of his fortune and the risk of his life, to defend the interests of England abroad, and to support the true spirit of the British constitution, and the honour and interests of Britain, at home—a person who, for twelve long years of public life, has never, till the present moment, been once

questioned for a libel on the government of any country whatever; has never, even by the worst of his enemies, been accused of being an advocate for misrule.

When, therefore, the defence of such a man is entrusted to me, I cannot but feel great anxiety. Nor, is that anxiety diminished, by the manner in which the Attorney-general thought proper to address you; nor by those peculiar circumstances of the case, which he stated to you with so much delicacy. Entertaining, as I do, a proper respect for the public characters adverted to in the information, it becomes me to discuss the allegations with freedom, and, at the same time, with temper and decorum. I should, however, ill discharge my duty, if I did not enter upon this defence with firmness. And I am sure his lordship will go along with me in saying, that we ought to treat the persons alluded to in the publications, not as private individuals, but as persons composing the government of Ireland. This is the real state of the question you have to try. It is not an information filed for the personal vindication of individuals, or for private retribution of justice, but is to justify public agents, in order to exonerate the Irish government from the charges made or implied in this publication.

Gentlemen, the question, then, for you to try is this, and to which you will apply your minds seriously, what was the intention? *quo animo* was this publication made? It has been stated to you, that this publication was sold so late as Tuesday last; and this was brought forward for the purpose of showing the disposition and intention of the person accused.—Gentlemen, the question of intention was, for a long time, excluded from the consideration of the jury; but since this jurisdiction has been acknowledged by a declaratory act, the law has been clearly understood. It took place in the 32nd of his majesty's reign, and is entitled, "An Act to remove Doubts respecting the Functions of Juries in Cases of Libel." This statute enacts and declares, that on every trial for this offence, the jury may give a general verdict of guilty or not guilty, upon the whole matter, and shall not be required to find the defendant guilty, merely on proof of publication, but may enter into the sense which the matter alleged to be libellous may correctly bear. You are, therefore, gentlemen, now invested with complete jurisdiction. An investigation of the conduct of public characters is the great and essential privilege of Englishmen. It has been said by Mr. Hume, that this liberty arose with the Revolution, and that, "As our right is founded on this liberty, so will our liberties be lost with this right." The liberty of the press has ever been held as one of the first principles of the constitution; but the control which the Attorney-general is desirous of putting upon it, would go to extinguish that liberty



for ever. The control which he wishes to fetter it with, is this. He says he is no enemy to a fair and free discussion of public characters, provided it be done with decency and decorum. Upon this point I am at issue with the Attorney-general. For, if the doctrine here laid down were to be admitted, there would be an end to all vigorous and manly writings. We should henceforward have no standard to appeal to; because, what might appear decent in the opinion of one Attorney-general, might appear ungentlemanlike and scurrilous in the opinion of another; and thus, the freedom of discussion relative to public men and public measures would depend, not upon a point of right, but upon the taste of the Attorney-general.—Gentlemen, these observations are material for your consideration; they are material on every account; both as applying to that invaluable privilege, the liberty of the press, and as applying, as I hope you will find they do apply, to the manly character of the gentleman, whose cause I am now pleading. And, I trust, after you have heard what I shall have to address to you, you will be of opinion that I have not entertained that hope in vain, but that, in your discernment and justice, I shall have that verdict for the defendant which will relieve him and his family from the distress which now hangs over them.

In the course of what I am about to say, I shall necessarily have to follow the example of the Attorney-general in repeating many of the passages which have been read to you already. This is a duty we all have to discharge here; and I am sure you will listen to them with the attention they deserve. There is not a doubt,—and I shall show it you,—that the production complained of was written after one of the most extraordinary and melancholy events that can possibly take place in any country. It originated and is founded upon the calamitous events, which took place in Dublin on the 23rd of July last. It is a description of that event, and was sent for publication to the person who is now under prosecution. Mr. Attorney-general says, that, whether Mr. Cobbett is the author, or whether he is merely the publisher, he is equally culpable. For my own part, I am fully convinced that Mr. Cobbett is not the author of this publication; but, whether he is or is not, you are to try it entirely by its own intrinsic merits. “But,” says Mr. Attorney-General, “you have had evidence, that a person bought the papers ‘in Pall Mall and in Bow-Street, down to the very day of the trial.’ This is very true, gentlemen, but you have had no evidence that Mr. Cobbett had any share in the publication of them. The witness merely stated, that the papers were sold by two persons; not that they were sold by Mr. Cobbett.—Mr. Attorney-General has thought proper to enter into a long panegyric on the

political merits of the earl of Hardwicke. Now, I must say, that I conceive the Attorney-general has no right to give you his private opinion of the merits of the earl of Hardwicke, or of any servant of the crown, seeing that, from his official situation, I should stand on unequal grounds, if I were to state my opinion in opposition to the opinion of his majesty’s Attorney-general. You must, therefore, discard all such evidence from your minds, and solely decide upon the merits of the case, from the evidence which you have already heard, and from that which I shall presently call to the character and conduct of the present defendant.

And this circumstance now leads me, very shortly, to state for your consideration, a few facts and observations relative to the character of the person before you. My learned friend has, in a vein of irony, alluded to Mr. Cobbett’s “illustrious descent.” Gentlemen, Mr. Cobbett does not merit such allusions. Mr. Cobbett is no vain boaster; he does not boast and has never boasted, of his pretensions in that respect. Mr. Cobbett is a person who, for a long period of time, both in America and in this country, has discharged the duties of a public writer; a station, which is one of the most important in the community, and if a man conducts himself in it with talent and with integrity, and according to the strict principles of the constitution, is also one of the most respectable and most honourable. To prove to you, that Mr. Cobbett has not boasted of his high descent, I will quote you a passage from one of his publications printed in America, where, on account of the slanders that were heaped on him, because he stood forward in defence of his country, he was compelled, in some sort, to publish a sketch of his life, in which sketch he concludes the description of his birth and parentage with saying “if from ‘my ancestors I derive no honour, I derive no shame.’” He was, as he there states, the son of a farmer, and the grandson of a day-labourer. He had no education but what was acquired in the hours of relaxation from the toils of the field. He there says, and greatly to his honour, that he cannot remember the time when he did not earn his living. His father’s house he quitted at a very early age. He has been in many parts of the world; constantly acquiring information, constantly walking in the path of integrity and honour, and constantly a strenuous defender of his country, against all her enemies. In several branches of science, and those not the least difficult, he has shown himself capable of excelling, notwithstanding he has had no aid from others, and is self-taught even in the grammar of his native language—that language which he uses with a degree of acuteness, precision, and force, rarely to be met with in the



writings of his contemporaries. Without any other guide than the purity and firmness of his own mind, he became, in a foreign country, and at a most critical juncture, the champion, almost the sole defender of the interests and honour of his country; and, this course of conduct he can be proved to have pursued during the whole of his political life.

Gentlemen, would not this species of character, which I could trace back to the hour when Mr. Cobbett left his father's house—

Lord *Ellenborough*.—I conclude you mean this only as evidence to general character. As such, I have no objection to your taking a free range.

Mr. *Adam*.—I will draw your attention, gentlemen, to another passage or two of the publication from which I have already quoted. Mr. Cobbett says: “to be descended from an illustrious family certainly reflects honour on any man, in spite of the sans-culotte principles of the present day. This is, however, an honour that I have no pretension to. All that I can boast of, in my birth, is, that I was born in Old England; the country whence came the men who explored and settled North America; the country of Penn, and of all those to whom this country is indebted. With respect to my ancestors, I shall go no farther back than my grandfather, and for this plain reason, that I never heard talk of any prior to him.—He was a day-labourer, and I have heard my father say, that he worked for one farmer from the day of his marriage to that of his death, upwards of forty years.” Now, gentlemen, was it proper to insinuate to you, that Mr. Cobbett is a person of excessive vanity, of disgusting ostentation on the topic of his birth. He describes his father as a farmer in moderate circumstances, and himself as one who was destined to earn his bread by the sweat of his brow. And, you will observe well, gentlemen, that he never has, in any part of his voluminous productions, ever uttered one phrase, expressive of contempt for rank, dignity, or birth; but has, on the contrary, always been the champion of the privileged orders, and, of course, the strenuous opposer of every democratical institution.

I beg leave to trouble you, gentlemen, with one more quotation. “People,” says Mr. Cobbett, “may say what they please about the misery of the French peasantry, under the old form of government; I have conversed with thousands of those peasants, not one of whom did not regret the change. I have not room here to go into an inquiry into the causes that have led these people to become the passive instruments, the slaves, of a set of tyrants, such as the world never saw before; but, I venture to predict, that sooner or later, they will return to that form of government, under which they were happy, and under which only they ever can be so again.” I have read this passage, gentlemen, in order to satisfy you, that Mr. Cobbett is not only the

friend of good government in this, but in every other country. Mr. Cobbett is no party writer, but he writes purely from a spirit and principle of his own. And if those whom he supports should think proper to take leave of their principles, they would soon find Mr. Cobbett take leave of them. You have before you a person writing on public affairs, without any control. Mr. Cobbett, gentlemen, has no control of purse hanging over him. Who ever may have been the author of the libel in question, Mr. Cobbett in publishing it has not suffered his general character to be injured by it. It is impossible to impute to Mr. Cobbett any deviation from those principles upon which he has uniformly acted.

Now, gentlemen, let us examine a little the publication before us. It consists of a series of letters written on the subject of the insurrection in Ireland of the 23rd of July last. The writer avows his object to be “the support of good government in Ireland, and the removal of the present administration.” Now, gentlemen, I humbly submit to you, that this is a fair and legitimate object. I have farther to submit to you, that this is not a question of judicial malversation. In those parts of the libel which relate to my lord Redesdale, there is no ground whatever for drawing that inuendo. You will see that there are two judicial characters introduced, my lord Redesdale and Mr. Justice Osborne. Throughout the whole publication you will not find any matter stated relating to the distribution of justice. The libel on Mr. Justice Osborne relates entirely to his political and not his judicial character. The whole applies to Mr. Justice Osborne as addressing a grand jury; and it is well known that addresses to grand juries have frequently been made the subject of public animadversion. There is a wonderful difference between calling in question the charge of a judge to a grand jury, and attacking him in the seat of justice. Gentlemen, the same observations apply generally to my lord Redesdale.—With respect to lord Hardwicke, it is almost unnecessary for me to tell you, that what is said of his lordship is entirely in his political character.

I shall now shortly call your attention to the different parts of the libel, but, before I do so, I am anxious to make one observation. You will perceive, that the object of this publication is a public one, that it has for its object the finding fault with the conduct of those who are at the head of the government in Ireland, that it has for its object the removal of that government, and that it expresses an anxious desire that that government should be placed in the hands of those who are able, by their abilities and their firmness, to put a period to the rebellion. In every part of the publication, the conduct of the rebels is held up to the severest reprobation; and when you consider, that the tenor of the publication agrees with the general conduct of the defendant for twelve long years both in this country



and in America, I am sure, gentlemen, you will pause, before you consent to attribute to him the motives with which he is charged in the information.

Gentlemen, the first part of the libel is what relates to my lord Hardwicke. It represents the head of his excellency to be a wooden one, and intimates that he is an improper person to be at the head of the Irish government. Now, Mr. Attorney General tells us, that Ireland is better provided with fleets and with armies, than it ever was at any former period. It may be true, that Ireland has a larger army and more numerous fleets than at any former period, but I submit to you, that it is perfectly fair, in a free country like this, to descant on the fitness or unfitness of public men for the situations they hold. It merely says, "you have supplied us with fleets, you have supplied us with armies, but you have not supplied us with a proper person at the head of the government." If we look round to public characters we shall find that there has been no minister or member of parliament who has not, at times, been the object of public animadversion. But in these cases you are bound to prove the bad disposition with which the libel was written, you are bound to prove the *malus animus* of it. And if we read on, we shall find, in the second extract, that, so far from its deserving to be considered in the light which Mr. Attorney General has stated to you, there cannot be a higher description of any man, than the one here given to my lord Hardwicke. The writer says, "Inquiry and research are the duty and the resource of the ignorant, and therefore I did inquire. The result of no small attention bestowed in this pursuit was, that I discovered of our viceroy, that he was in rank an earl, in manners a gentleman, in morals a good father, and a kind husband." Here then, lord Hardwicke is held up as having all those good qualities which every one who has the happiness of being acquainted with his lordship are ready to allow him. He goes on to state, "that he had a good library in St. James's-square, and that he further learned from a Mr. Lindsay, that my lord Hardwicke was celebrated for understanding the modern method of fattening a sheep as well as any man in Cambridgeshire." I submit to you, gentlemen, that if lord Hardwicke is merely held up as a feeder of sheep, in addition to all those private virtues, it is impossible for you to say, that the object of this publication is to destroy the government of Ireland. No, gentlemen; it was written with the impression, that Ireland possessing those numerous fleets and those immense armies, ought also to have a person of great political character at the head of her government; and that, as my lord Hardwicke was not a political character in his own country, he was, therefore, not a proper person to be sent over to Ireland. It means, that you ought to have sent over a man of a political mind, one who, by the powers of that mind, was capable of

giving efficacy to all the operations of government. Gentlemen, is not this the plain intent and meaning of the passage? I, therefore, humbly submit to you, that, taken by itself, it can never be supposed to be a libel to the conviction of Mr. Cobbett.—The next passage begins thus: "Suppose that, by some unfortunate combination of events, this little island should be deeply shaken by insurrection within, and should be loudly menaced by invasion from without. Suppose a powerful fleet of the enemies of the British name lay to windward, filled with troops for landing, while a desperate band of ruffians were secretly arming in its bosom, ready to aid the landing of a foreign enemy:"—Now, gentlemen, I do conjure you to consider attentively this part of the subject. The writer is supposing Ireland to be deeply shaken by insurrection within and and loudly menaced by invasion from without:—He then holds them out as a desperate band of ruffians; when he contemplates the rebels, he brands them with the epithet of ruffians. The writer then goes on to say: "Suppose in this distress, a committee of West-India proprietors, whose money had been vested in this little island, should apply to doctor Addington for assistance: and suppose he were to rise up, and to desire them to quit their apprehensions, for that he had entrusted the care of their island to a very eminent sheep-feeder from Cambridgeshire, who was to be assisted in all his councils by a very able and strong built chancery pleader from Lincoln's Inn." Now, gentlemen, this certainly is ridicule, and ridicule I contend, is a weapon which may be fairly and honourably employed, especially when it is in the true spirit of English humour and for an object purely of a public nature. The bestowing of nick-names is a practice to which Englishmen are peculiarly addicted.—We have all heard of Carlo Khan with the India-house on his back, and of the colossus of the North represented with one foot on Berwick Bridge, and the other on the Orkneys. In the present instance, lord Hardwicke is again represented as a person devoted to agricultural pursuits—

Lord *Ellenborough*.—Do you maintain that a person has a right to ridicule his neighbour?

Mr. *Adam*.—This is an information for a public libel, and not for private ridicule.

Lord *Ellenborough*.—I suppose you have some authority. I do not wish to restrain your arguments, but it is a doctrine which never was and never can be maintained.

Mr. *Adam*, after going at length into the various passages commented upon by the attorney-general, and contending that they merely contained ridicule, and were written with the fair view of procuring the removal of what the author considered the inefficient servants of the crown, concluded his speech in the following words:—Gentlemen, I have now gone through the several parts of the publication. I know that in your justice and your wisdom you will deal uprightly with my



client. In the course of my address to you, I took occasion to allude to the evidence which I should call in behalf of the defendant. I know that evidence can only be received as to general character. But, I trust, in the present case, it will be admissible, in order to rebut the charge of endeavouring to overthrow the government of Ireland. Gentlemen, I shall prove to you by lord Henry Stewart, who was acquainted with Mr. Cobbett in America, and by several gentlemen of the first respectability, who have known him ever since his return to this country, that the whole tenor of his life has been an adherence to the principles of good government, and to the cause of his country. Now, gentlemen, of what is Mr. Cobbett accused? Of sending a libel into the world, calculated to overturn the government of Ireland as by law established; and, consequently, the species of evidence I am about to produce, must have a considerable effect inasmuch as it will show that the defendant is incapable of the crime attributed to him. Gentlemen, I leave the cause in your hands, confident that the verdict of an upright jury of independent Englishmen, will acquit the defendant of the criminality imputed to him, and relieve him and his family from the distress which at present hangs over them.

## EVIDENCE FOR THE DEFENDANT.

*Robert Liston, esq. sworn.—Examined by Mr. Richardson.*

I believe, sir, you held the situation of British minister in America?—I did; from the year 1796 to 1800.

Were you personally acquainted with Mr. Cobbett the defendant?—I was.

Were you acquainted with his general character and conduct?—I was.

From your knowledge on that subject, what was his general character and conduct?—Eminently excellent.

What was his general character as to loyalty and attachment to the constitution?—That of a zealous defender of the principles of the constitution in all its branches.

*Robert Liston, esq. cross-examined by the Attorney General.*

Is Mr. Cobbett one of the last men you know who would publish a libel against the government under which he lived?—Do you mean with regard to America?

You think, then, that he might be induced to publish a libel against any other government than his own?—I cannot answer for that.

Is he not a man likely to libel a government he was not living under?—He might be induced to do it. Mr. Cobbett is a gentleman possessing an ardent mind, and he might be induced to libel a government under which he was not living, always excepting his own.

§

*Lord Henry Stewart sworn.—Examined by Mr. Richardson.*

I believe your lordship resided with Mr. Liston whilst he was British minister in America?—I did.

Were you acquainted with Mr. Cobbett there?—I knew him well.

Will your lordship have the goodness to state what you know of him?—He is a man the most devotedly attached to the king, the royal family, and to every branch of the constitution.

*The Right Hon. William Windham sworn.—Examined by Mr. Richardson.*

How long have you been acquainted with the defendant, Mr. Cobbett?—Ever since his return to this country, which was, I believe, in 1800.

During that time, what has been your opinion of him, with respect to his loyalty and attachment to the constitution?—I can speak of him much to the same effect as the last witness. I should consider him as a person of an attachment quite devoted to the king and constitution of this country.

*The Right Hon. Lord Minto sworn.—Examined by Mr. Adam.*

You have been acquainted, my lord, with the defendant?—Ever since my return to this country in 1801.

Will your lordship state what you know of him?—I am perfectly satisfied, with the former witnesses, that he is decidedly attached both to the sovereign and the constitution of this country.

*The Right Hon. Charles Yorke sworn.—Examined by Mr. Richardson.*

Have you been long acquainted with Mr. Cobbett?—Ever since June, 1802.

Are you generally acquainted with his character and conduct?—I know some particular instances of his conduct, which induce me to think that he is a zealous supporter of the monarchy and the constitution.

Have any recent instances occurred to support your opinion?—The particular instances I allude to, took place previous to July last.

*John Reeves, esq. sworn.—Examined by Mr. Richardson.*

Are you acquainted with the defendant, Mr. Cobbett?—I am.

Have you any particular reasons to be acquainted with his character?—I have. I see Mr. Cobbett very frequently. Generally two or three times a week. I conceive him to be a strong defender of the king and constitution, as by law established.

The evidence being closed on the part of the defendant,

The Attorney General rose in reply, and addressed the Court to the following effect; I



hope, gentlemen, it will not be necessary for me to lengthen out the attention which you have already given to this important subject. I trust, however, I shall be permitted to say a few words in reply to some parts of the speech of my learned friend. No small portion of that speech was taken up with a description of Mr. Cobbett's general character. I have no business here with his general character or past life. I have no business to inquire whether, when living in America, he was a strenuous supporter of the interests of Great Britain. There is not one word of this information that charges him with a contrary line of conduct. The question is, whether this "ardent-minded man," as Mr. Liston described him, has not been induced to publish an abominable libel against the government of Ireland? Not a tittle of evidence has been brought by those respectable gentlemen who appeared to his character, to prove the contrary; and, notwithstanding his having formerly acted upon different principles, I am entitled to say, that if he wilfully and knowingly published the letters in question he is as gross a libeller as ever came into a court of justice.

I stated distinctly, that I was no enemy whatever to a fair discussion of public men and public measures. And if the character of the different governments of this country be considered, I am persuaded it will be found, that the principle of liberality has been extended full as much as at any former period. In saying this, I take no merit whatever to myself. In doing so I was persuaded I was following that line of conduct which was useful both to the government and the people. But, is it to be argued from this, because much has been tolerated, that therefore, a doctrine so monstrous as that which my learned friend has laid down should be acted upon; namely, that no attack upon government ought to be made the subject of criminal animadversion? I say, this is a monstrous proposition; and if it is once supported by the authority of a British jury and British lawyers, it will lead to the absolute destruction of the liberty of the press. Gentlemen, I certainly admit that this free discussion of public measures should be open and uncontrolled, and not subject to the taste of any attorney-general; but I submit to your consideration, whether these passages of ridicule in the publication in question are libellous or not? The mere circumstance of making any man ridiculous is a decided libel; and is it to be contended, that, because a man is exalted to a public situation, he is, therefore, to be libelled with impunity? If, as I said before, this libel consisted in calling Mr. Addington, "doctor Addington," my lord Hardwicke "a sheep feeder," or my lord Redesdale "a chancery pleader,"—I never should have thought of troubling you on such an occasion. But, when I see the whole administration of a country attacked, individually and personally, and their characters held up to the detestation of the public, I cannot

help concluding, that there is an intention to do mischief to the government of that country, as well as to the lives of all those who live under that government. With respect to Mr. Justice Osborne, will any one pretend to say, that it was merely in his political character that he was attacked? What does he mean when he says, "I may, I believe add, what men also say; that if it were possible the ermined robe of the most awful attribute of his majesty, should have been wrapped round the acts of Mr. Marsden, in order to screen them from public disgrace, we might then look for another, but not less fatal end to our liberties, and to our constitution, than that which rebellion or invasion could produce." Is not this a dreadful charge indeed? The following passage is to the same effect. "Whatever the present government may have manifested, the opinion of that government is known to be influenced by motives very different from general justice." Is not this a direct charge, that the present government of Ireland were influenced by motives very different from those of general justice.—With respect to the comparison of the "wooden horse," and the flippancy of "the sheep-feeder from Cambridgeshire," no man alive can say that a character placed in such an exalted situation by his sovereign, ought to be made the sport of ridicule of this sort. We are told, that Mr. Cobbett is very fond of the monarchy; that is to say, he would strip the monarchy of all its officers. This is the way in which this "ardent minded man," this "moral politician" would support the government!—But, gentlemen, you must not stop here; for the author has not stopped here. He says, that "lord Kenyon, therefore, as chancellor, never would have made any rule or order by the effects of which, the secretary of the master of the rolls would be deprived of all fees, for the purpose of throwing all those fees into the hands of the secretary to the chancellor, the better to enable that secretary to discharge the pension of some unknown annuitant on his official profits." Meaning thereby, that lord Redesdale, as chancellor, has done all this.—My learned friend has passed over the last part of the libel, which insinuates, that lord Redesdale has "employed his leisure in searching into offices for practices, by which he might harass the domestic arrangement of others, whose pride and integrity would not bend to his views." And how does my learned friend leave this? Why, he says, that you do not know exactly what it means. I suppose, then, that the "*spargere voces in vulgum ambiguas*" is all gone by. But, notwithstanding what my learned friend tells you, I will venture to say, that it is impossible to ascribe to this passage any good meaning, and I trust that you gentlemen, will have the same sense of its atrocity as I have. What! because Mr. Cobbett has been twelve years before the public without a pro-



secution; because he has manifested in America and elsewhere a spirit of loyalty, is he to have a complete indemnity for the publication of such gross libels as those before you?—Gentlemen, I shall not trouble you with any farther observations. The merits of the case are now before you. If my lord tells you it is a libel, you may still judge of the facts. If you think conscientiously that it is not a libel, if you think that this is the way in which governments are to be treated, you will, of course, acquit the defendant.

## SUMMING UP.

Lord *Ellenborough*.—Gentlemen of the Jury; The evidence on both sides, and the arguments of the counsel being now closed, it remains for us to discharge the respective duties which the laws of the country have cast upon us. I never doubted that an English jury had the right of judging in these cases, not only of the fact of publication, but also of the nature and construction of the thing published; and the noble person, whose place I so unworthily fill, entertained the same sentiments.\* The act of parliament which has been alluded to, is merely declaratory, and, had it not passed, I should nevertheless have submitted the whole case to your consideration. On the three following points you have to exercise your judgment: first, the preliminary allegations and innuendos; next, the fact of publication; and thirdly, the quality and sense of the thing published. This is the matter at issue.

Upon the subject of libel, it may be as well for me to observe, before I enter upon the question, that, by the law of England, there is no impunity to any person publishing any thing that is injurious to the feelings and happiness of an individual, or prejudicial to the general interests of the state. Gentlemen, the law of England is a law of liberty, and, consistently with this liberty, we have not what is called an *imprimatur*; there is no such preliminary licence necessary. But, if a man publish a paper, he is exposed to the penal consequences, as he is in every other act, if it be illegal; and it is illegal, if it tends to the prejudice of any individual. Now, therefore, applying this doctrine to the publication before us, the question for your consideration is, whether this paper is such as would be injurious to the individuals, and whether it is calculated to be injurious to the particular interests of the country? It is no new doctrine, that if a publication be calculated to alienate the affections of the people, by bringing the government into disesteem, whether the expedient be by ridicule or obloquy, the person so conducting himself is exposed to the inflictions of the law. It is a crime. It has ever been considered as a

crime; whether it be wrapped in one form or in another. The case of the *King v. Tutchin*,\* decided in the time of lord chief justice Holt, has removed all ambiguity from this question; and, although at the period when that case was decided, great political contentions existed, the matter was not again brought before the judges of the Court by any application for a new trial.

Having said thus much on the general law of libels, let us apply it to the case before us. It has been proved to you, that Mr. Cobbett is the sole proprietor of the publication; that lord Hardwicke and the other characters mentioned hold the several offices in Ireland attributed to them; and that the publication was sold by Richard Bagshaw, in Bow-street, Covent Garden, both on the days of publication, and also so late down as Tuesday last. The reason of purchasing this second copy on Tuesday last, is to show you, that Mr. Cobbett persevered in the sale of the libels to the very last. Mr. Crowe has proved to you, that by the “*Cambridgeshire earl*” was meant lord Hardwicke, and that the appellation of “*chancery pleader*” was intended to designate lord Redesdale.

Gentlemen, the several innuendoes in the papers being thus proved, let us a little consider their quality and context. The first paper begins thus: “*Equo ne credite Teucris*, was the advice which, in a dangerous moment, Laocoon gave to the Trojans. It will be remembered that the *equus* against which that sagacious adviser cautioned his countrymen, was a wooden one. His countrymen did not regard Laocoon; they received the *wooden* representative of wisdom; they approached it as if it possessed authority and power. Its *wooden* head towered above their houses. But though the machine itself was of innoxious wood, the credulous Trojans found its hollow head and exalted sides, nothing less than receptacles for greedy peculators and blood-thirsty assassins. The ingenious author of the story did not mean to confine the lesson which it inculcates, to the tale of Troy alone; he meant to take advantage of the easy metaphorical expression, which, by the common assent of mankind, had moulded itself into most languages, and by which a certain species of heads (which the moderns have ascertained to be a non-conductor of ideas) has been denominated a *wooden* head. He meant to caution future nations, not to put trust or confidence in the apparent innocence of any such wooden instrument; and not to suffer themselves to be led to exalt it into consequence, or to pay it any respect.” Can there be any other meaning in this, than to impress the people of Ireland with a contemptible opinion of the abilities of lord Hardwicke? And, gentlemen, if that is the meaning and intention of the publication, it is a libel; for no man has a right to render

\* But see lord Kenyon's speech on the Libel bill, 29 New Parl. Hist., p. 1293, and the Protest, p. 1537 of the same volume.



the person or abilities of another ridiculous, not only in publications, but if the peace and welfare of individuals, or of society, be interrupted, or even exposed by types and figures, the act, by the law of England, is a libel. Then he goes on to say, "that any people who submitted to be governed by a wooden head, would not find their security in its supposed innoxiousness, as its hollowness would soon be occupied by instruments of mischief." Submitted! Is not this instigating the people of Ireland to rebellion? For, in what way, but by acts of open violence can they avoid "submitting" to the government which is set over them?—Then he goes on: "When I found, sir, this portion of the kingdom overwhelmed by such consequences to our property, as the rapacity of Mr. Marsden and his friends, and such consequences to our lives, as the pikes of Mr. Emmet and his friends, have lately produced; when I could trace all these evils as the inevitable issue from the head and body of such a government as that of lord Hardwicke, and I am told of his *innocuousness* and his *firmness*, I still reply the story of the *wooden* horse, and I shall still, notwithstanding the fate of Laocoon, raise my voice to my countrymen, and cry, *Equo ne credite Teucris*. Not, sir, that I would be understood literally. I do not mean to assert the head of my lord Hardwicke is absolutely built of timber. My application, like that of the original author of the tale, is only metaphorical. Yet, at the same time, I cannot avoid suspecting, that if the head of his excellency were submitted to the analysis of any such investigator of nature as Lavoisier, it would be found to contain a superabundant portion of particles of a very ligneous tendency. This, sir, is the lord Hardwicke of doctor Addington, against whose government 'not a murmur of complaint has been heard'—While our property has been subject to the plunder of his clerks, and our persons have been exposed to the pikes of the rebels." Now, the libels in this sentence are these: first, it is stated, of Mr. Marsden, that he is a rapacious man; then the author goes on to say, that he could trace all the evils which the pikes of Mr. Emmet and his friends have lately produced, as the inevitable issue from the head and body of such a government as that of lord Hardwicke. He admits this noble person to be celebrated for "understanding the modern method of fattening a sheep as well as any man in Cambridgeshire." Now, gentlemen, what does this mean? Does it not clearly mean to infer, that lord Hardwicke is ill-placed in his high situation, and that he is only fit for the common walks of life?—There is another part of the libel to which I wish to draw your attention. The author says, "What! Is he one of the tribe of the Hobarts, Westmorelands, and Camdens? Is he one of that tribe, who have been sent over to us to be trained up here into politicians, as they train the surgeons apprentices in the hospitals, by setting them first to bleed the

pauper patients? Is this the time for a continuation of such experiments?" What does the whole of this mean? Is it not saying, that lord Hardwicke was sent over by his majesty to the people of Ireland, merely to be trained up into a politician, as they train surgeons apprentices in the hospitals, by setting them first to bleed the pauper patients? It is for you to say, whether such is not the obvious sense of this sentence.

There is one other part of the publication to which I am desirous of drawing your attention; it relates to the imputation on lord Redesdale: it says, that "the opinion of the present government is known to be influenced by motives very different from general justice." Amongst so many passages of this description, it is hardly necessary to call your attention to particular instances; one or two more I shall, however, briefly mention. "With what amazement," says he, "the grand jury must have received such a broadside, poured upon the truth of the fact, I cannot, as I was not present, know; but I can very well imagine what the feelings of 23 well-informed gentlemen must have been." Is it to be endured, that it should be said of any person, but, more especially of a person sitting in the capacity of a judge, that he had poured a broadside upon the truth of the fact? Then it goes on; "in truth, they say, that, except as to momentary effects, rebellion and invasion might be viewed with indifference, if it can be supposed, that the stained hands of a petty clerk had been washed in the very fountain of justice." Is not this saying, that rebellion and invasion may be viewed with indifference? And is not the whole of the sentence connected with what was said before?—It then says, "It was said of lord Kenyon, that he loved money; if so, he loved his own money only, and not the money of any other man." Which is saying, as was observed to you before, that lord Redesdale is fond of the money of other men.—The last passage I shall call to your attention is this: "Lord Kenyon, therefore, as chancellor, never would have made any rule or order, by the effects of which, the secretary of a master of the rolls would be deprived of all fees, for the purpose of throwing all those fees into the hands of the secretary to the chancellor, the better to enable that secretary to discharge the pension of some unknown annuitant on his official profits." Contrasting lord Kenyon with lord Redesdale, this passage clearly imports, that lord Redesdale, as chancellor, did make a rule or order, by the effects of which, the secretary to the master of the rolls was deprived of all his fees, for the purpose of throwing those fees into the hands of the secretary to the chancellor, the better to enable that secretary to discharge the pension of some unknown annuitant on his official profits.

Gentlemen, such is the publication before you. It is to speak for itself in its plain sense. The question for you to consider, if it can be



a question, is, whether these libels (when I call them libels I am anticipating your decision) are capable of any other construction than what has been put upon them? It has been stated of the defendant, that he is a self-taught politician. Gentlemen, no man can write without control. It is necessary he should know, that every man must be controlled by law. It has been observed, that it is the right of the British subject, to exhibit the folly or imbecility of the members of the government. But, gentlemen, we must confine ourselves within limits. If, in so doing, individual feelings are violated, there the line of interdiction begins, and the offence becomes the subject of penal visitation. Evidence to character has been produced on the part of the defendant. But the effect of character is, to render the charge doubtful. As

to the fact of publication, in the present case there can be no doubt whatever. If you are of opinion that the publications are hurtful to the individuals or to the government, you will find the defendant guilty; if, on the contrary, you consider them neither destructive of the peace of the one or the other, you will acquit him of the charges under this information.

The jury, after a pause of about ten minutes, delivered their verdict—*Guilty*.

The defendant, who afterwards on the trial of the honourable Robert Johnson, for being the author of the letters which were the subject of this prosecution, appeared as a witness for the Crown, was never called upon to receive sentence, on this conviction.

671. Trial of an Action for Damages brought by W. C. PLUNKETT, Esq., Solicitor-General of Ireland, against WILLIAM COBBETT, for publishing a Libel upon the Plaintiff; tried by a Special Jury, before the Right Hon. Edward Lord Ellenborough, Lord Chief Justice of his Majesty's Court of King's-Bench at Westminster, on Saturday May 26th: 44 GEORGE III. A. D. 1804.\*

*Counsel for the Plaintiff.*

The Hon. Thomas Erskine [afterwards Lord Chancellor Erskine].

Mr. Garrow [afterwards a Baron of the Exchequer].

Mr. Dampier [afterwards a Judge of the King's-bench].

Mr. Nolan.

*Counsel for the Defendant.*

Mr. Adam [afterwards Lord Chief Commissioner of the Jury Court of Scotland].

Mr. Richardson [afterwards a Judge of the Common Pleas].

THE DECLARATION.

Hilary Term, in the forty-fourth year of the reign of king George the third.

Middlesex }  
to wit. } WILLIAM CONYNHAM  
PLUNKETT complains of William Cobbett being in the custody of the marshal of the Marshalsea of our lord the king before the king himself For that whereas the said William Conyngham now is and from the time of his nativity hitherto hath been a good true

\* See the preceding trial, and the case of the Honourable Robert Johnson *infra*.

faithful and honest subject of our lord the king and as such hath always hitherto conducted himself And whereas also the said William Conyngham before and at the time of the publishing the false scandalous malicious and defamatory libels hereinafter mentioned was and yet is a barrister at law in that part of the united kingdom of Great Britain and Ireland called Ireland practising there and solicitor general of our lord the king in Ireland And whereas also before and at the time of the publishing the several false scandalous malicious and defamatory libels hereinafter mentioned the right honourable Philip earl of Hardwicke was lieutenant general of that part of the united kingdom of Great Britain and Ireland called Ireland and was governor general of that part of the said united kingdom called Ireland And whereas also before the publishing of the several false scandalous malicious and defamatory libels hereinafter mentioned one Robert Emmet had been in due manner tried in Ireland upon an indictment for high treason on which said trial he the said William Conyngham was as such barrister at law as aforesaid retained and employed on the part of the prosecution and as such barrister made observations upon the evidence given upon the said trial And whereas also the said Robert Emmet was in due manner convicted of high treason upon the said trial and re-



ceived the sentence of the law upon such his conviction And whereas also before the publishing of the several false scandalous malicious and defamatory libels hereinafter mentioned and before the union between Great Britain and Ireland and while the said William Conyngham was such barrister as aforesaid he the said William Conyngham had been a member of the Commons House of Parliament in Ireland and had in the Commons house of Parliament in Ireland as such member thereof delivered his opinion upon various subjects there debated and discussed And whereas also the said William Conyngham before and at the time of the publishing of the several false scandalous malicious and defamatory libels hereinafter mentioned was much employed in his profession of a barrister at law whereby he got great gains and profits and was also much respected consulted and entrusted by divers persons holding high offices in the administration and government of Ireland that is to say at Westminster in the said county of Middlesex and had always so behaved and conducted himself as deservedly to have gained and retained the esteem of all persons by whom he was so as aforesaid retained, employed and entrusted to his great comfort and advancement in life Yet the said William Cobbett well knowing the premises but greatly envying the happy state and condition of the said William Conyngham and contriving and maliciously intending to injure him in his said profession of a barrister at law and to cause him to be reputed a base unworthy and unprincipled man and an unfit person to hold his said office of solicitor general of our said lord the king of Ireland or to be entrusted by any person holding any office in the administration and government of Ireland and to deprive him of his good name fame credit and reputation amongst all good subjects of our lord the king and to bring him into great scandal infamy and contempt on the tenth day of December in the year of our lord one thousand eight hundred and three at Westminster aforesaid in the said county of Middlesex in and by a certain printed paper of and concerning the affairs of Ireland and the administration of the affairs and government thereof did falsely and maliciously publish a certain false scandalous malicious and defamatory libel and of and concerning the said William Conyngham and of and concerning his conduct as a barrister at law upon the said trial of the said Robert Emmet and of and concerning his conduct as a member of the Commons House of parliament in Ireland, and the opinions by him there delivered and of and concerning the opinion which it is in that libel asserted the late right honourable Lloyd lord Kenyon now and at the time of the said trial of the said Robert Emmet and of the publishing the said libel deceased would have entertained of the said William Conyngham had the said late lord Kenyon been alive and been employed in the administration

of the affairs and government of Ireland at the time of the said trial of the said Robert Emmet which same false scandalous malicious and defamatory libel was and is in a certain part thereof as follows to wit "From a rare modesty of nature or from a rare precision of self-knowledge lord Kenyon" (meaning the said late lord Kenyon) "would have acted with reserve and circumspection on his arrival in a country" (meaning the country of Ireland) "with the moral qualities of the inhabitants of which and with their persons manners and individual characters and connexions he must have been utterly unacquainted In such a country torn by domestic sedition and treason threatened with foreign invasion and acting since the union under an untried constitution if doctor Addington had required that lord Kenyon" (meaning the said late lord Kenyon deceased) "should direct a Cambridgeshire earl" (meaning the said Philip earl of Hardwicke so being lieutenant general and also governor general of that part of the united kingdom of Great Britain and Ireland called Ireland as aforesaid) "in all his councils lord Kenyon" (meaning the said late lord Kenyon) "would as soon at the desire of lord St. Vincent have undertaken to pilot a line of battle ship through the Needles Particularly the integrity of lord Kenyon" (meaning the said late lord Kenyon) "would have shrunk from such an undertaking if a condition had been added to it that no one nobleman or gentleman who possessed any rank estate or connexion in the country should upon any account be consulted His pride would have spurned at the undertaking if he were told that to the Cambridgeshire earl" (again meaning the said Philip earl of Hardwicke so being lieutenant-general and also governor-general of that part of the united kingdom of Great Britain and Ireland called Ireland as aforesaid) "and himself in the cares of government" (meaning the government of Ireland) "a clerk in the secretary's office and a couple of lawyers" (meaning that the said William Conyngham was one of these lawyers) "without political habits political information or honourable connexion were to be joined as assessors and to be the only assessors And lord Kenyon's" (meaning the said late lord Kenyon's) "pride and integrity would have both joined in preventing him from being himself the instrument of introducing such men into a cabinet of government If any one man could be found" (meaning that the said William Conyngham was that man) "of whom a young but unhappy victim of the justly offended laws of his country" (meaning the said Robert Emmet) "had in the moment of his conviction and sentence" (meaning the aforesaid conviction of the said Robert Emmet of high treason and his said sentence thereupon) "uttered the following apostrophe—"That viper" (meaning the said William Conyngham) "whom my father nourished! He it was from whose lips I first imbibed those principles and doctrines which now by their effects drag me to my



grave" (meaning that the said Robert Emmet had first imbibed principles and doctrines from the said William Conyngham which by their effects led him to commit high treason) "and he it is who is now brought forward as my prosecutor and who by an unheard of exercise of the prerogative has wantonly lashed with a speech to evidence" (meaning the observations upon the evidence given on the said trial of the said Robert Emmet so as aforesaid made by the said William Conyngham) "the dying son of his former friend when that dying son had produced no evidence had made no defence but on the contrary had acknowledged the charge and had submitted to his fate" (meaning thereby that the said William Conyngham had acted in the manner above described in the said libel) "Lord Kenyon" (meaning the said late lord Kenyon) "would have turned with horror from such a scene in which although guilt was in one part to be punished yet in the whole drama justice was confounded humanity outraged and loyalty insulted Of lord Kenyon therefore (Cambricus must well know) it never could have been believed that he himself would lead such a character" (meaning the said William Conyngham) "forward introduce him" (meaning the said William Conyngham) "to the favour of a deceived sovereign clothe him" (meaning the said William Conyngham) "in robes and load him" (meaning the said William Conyngham) "with the emoluments of office" (meaning the said office of solicitor-general of our said lord the king of Ireland) "Lord Kenyon" (meaning the said late lord Kenyon) "must have known that a noble duke for having toasted at a drunken club in a common tavern to a noisy rabble 'the sovereignty of the people' was struck by his majesty's command out of the privy council and deprived of all his offices both civil and military If therefore any man were to be found" (meaning that the said William Conyngham was that man) "who not at a drunken club or to a brawling rabble but in a grave and high assembly" (meaning the said Commons House of Parliament in Ireland) "not in the character of an inebriated toast-master but in that of a sober constitutional lawyer had insisted on the sovereignty of the people as a first principle of the English law and had declared that by law an appeal lay from the decision of the tellers of the Houses of Parliament to that of the tellers of the nation and that if a particular law were disagreeable to the people however it might have been enacted with all royal and parliamentary solemnity nevertheless it was not binding and the people by the general law were exempted from obedience to such a particular law because the people were the supreme and ultimate judges of what was for their own benefit" (meaning that the said William Conyngham had delivered such opinions as are above set forth in the said libel in the Commons House of Parliament

in Ireland) "Lord Kenyon" (meaning the said late lord Kenyon) "if he had been chancellor in any kingdom in Europe would have shrunk from recommending any such man to the favour of a monarch while there yet remained a shadow of monarchy visible in the world"

2d. Count.—And the said William Cobbett of his further malice against the said William Conyngham and again contriving and maliciously intending to injure and prejudice him as aforesaid afterwards to wit on the same tenth day of December in the said year of our Lord one thousand eight hundred and three at Westminster aforesaid in the said county of Middlesex did falsely and maliciously publish a certain other false scandalous malicious and defamatory libel of and concerning the said William Conyngham and of and concerning his conduct as a barrister at law upon the said trial of the said Robert Emmet and of and concerning the opinion which it is in that same libel asserted the said Lloyd Lord Kenyon now and at the time of the said trial of the said Robert Emmet deceased and of the publication of the said libel would have entertained of the said William Conyngham had the said late lord Kenyon been alive and present at the said trial of the said Robert Emmet which same false scandalous malicious and defamatory libel was and is in a certain part thereof as follows to wit if any one man could be found" (meaning that the said William Conyngham was that man) "of whom a young but unhappy victim of the justly offended laws of his country" (meaning the said Robert Emmet) "had in the moment of his conviction and sentence" (meaning the aforesaid conviction of the said Robert Emmet of high treason and his said sentence thereupon)" uttered the following apostrophe "That viper!" (meaning the said William Conyngham) "whom my father nourished! He it was from whose lips I first imbibed those principles and doctrines which now by their effects drag me to my grave;" (meaning that the said Robert Emmet had first imbibed principles and doctrines from the said William Conyngham which by their effects led him to commit high treason) "and he it is who is now brought forward as my prosecutor and who by an unheard of exercise of the prerogative has wantonly lashed with a speech to evidence the dying son of his former friend when that dying son had produced no evidence had made no defence but on the contrary had acknowledged the charge and had submitted to his fate" (meaning thereby that the said William Conyngham had acted in the manner so described in the said last mentioned libel) "Lord Kenyon" (meaning the said late lord Kenyon) "would have turned with horror from such a scene in which although guilt was in one part to be punished yet in the whole drama justice was confounded humanity outraged and loyalty insulted"



Of lord Kenyon therefore" (meaning the said late lord Kenyon) "Cambricus must well know it never could have been believed that he himself would lead such a character" (meaning the said William Conyngham) "forward introduce" him (meaning the said William Conyngham) "to the favour of a deceived sovereign clothe him" (meaning the said William Conyngham) "in the robes and load him" (meaning the said William Conyngham) "with the emoluments of office" (meaning the said office of solicitor general of our said lord the king of Ireland)

*3rd. Count.*—And whereas also the said William Conyngham before and at the time of the publishing of the false scandalous malicious and defamatory libel hereinafter mentioned was and yet is a barrister at law in that part of the United Kingdom of Great Britain and Ireland called Ireland practising there and solicitor general of our said lord the king in Ireland And whereas also before the publishing of the false scandalous malicious and defamatory libel hereinafter mentioned one Robert Emmet had been in due manner tried in Ireland upon an indictment for high treason on which said trial the said William Conyngham was as such barrister at law as aforesaid retained and employed on the part of the prosecution And as such barrister at law made observations on the evidence given upon the said trial And whereas also the said Robert Emmet was in due manner convicted of high treason upon the said trial and received the sentence of the law upon such his conviction And whereas also the said William Conyngham before and at the time of publishing the false scandalous malicious and defamatory libel hereinafter mentioned was much employed and consulted in his profession of a barrister at law whereby he got great gains and profits and was much respected and entrusted by divers of his friends and acquaintance in the management and conduct of their affairs and business that is to say at Westminster aforesaid in the said county of Middlesex and had always so behaved and conducted himself as deservedly to have gained and retained the esteem of all persons by whom he was so as last aforesaid retained employed consulted and entrusted to his great comfort and advancement in life Yet the said William Cobbett well knowing the said last-mentioned premises but greatly envying the happy state and condition of the said William Conyngham and contriving and maliciously intending to injure him in his said profession as a barrister at law and to cause him to be reputed a base unworthy and unprincipled man and an unfit person to hold his said office of solicitor-general of our said lord the king of Ireland or to be employed consulted or entrusted by any person in his said profession of a barrister at law and to deprive him of his good name fame credit and reputation amongst all good subjects of our lord the king and to bring him into great

scandal infamy and contempt on the tenth day of December in the said year of our lord one thousand eight hundred and three at Westminster aforesaid in the said county of Middlesex did falsely and maliciously publish a certain other false scandalous malicious and defamatory libel of and concerning the said William Conyngham and of and concerning his conduct as a barrister at law upon the said trial of the said Robert Emmet and of and concerning the opinion which it is asserted in the same libel the said late lord Kenyon would have entertained of the said William Conyngham and of his conduct at that trial which same false scandalous malicious and defamatory libel was and is in a certain part thereof as follows "If any one man could be found" (meaning that the said William Conyngham was that man) "of whom a young but unhappy victim of the justly-offended laws of his country" (meaning the said Robert Emmet) "had in the moment of his conviction and sentence" (meaning the aforesaid conviction of the said Robert Emmet of high treason and his said sentence thereupon) "uttered the following apostrophe 'That viper!' (meaning the said William Conyngham) 'whom my father nourished! He it was 'from whose lips I first imbibed those principles and doctrines which now by their effects drag me to my grave' (meaning that the said Robert Emmet had first imbibed principles and doctrines from the said William Conyngham which by their effects led him to commit high treason) 'and he it is who is 'now brought forward as my prosecutor and 'who by an unheard-of exercise of the prerogative has wantonly lashed with a speech to 'evidence' (meaning the said observations upon the evidence given upon the said trial of the said Robert Emmet so made by the said William Conyngham as last aforesaid) 'the dying son of his former friend when that 'dying son had produced no evidence had made 'no defence but on the contrary had acknowledged the charge and had submitted to his 'fate' (meaning thereby the said William Conyngham had acted in the manner above described in the said last mentioned libel) "lord Kenyon" (meaning the said late lord Kenyon) "would have turned with horror from such a scene, in which although guilt was in one part to be punished yet in the whole drama justice was confounded humanity outraged and loyalty insulted Of lord Kenyon" (meaning the said late lord Kenyon) "therefore Cambricus must well know it never could have been believed that he" (meaning the said late lord Kenyon) himself would lead such a character" (meaning the said William Conyngham) "forward introduce him" (meaning the said William Conyngham) "to the favour of a deceived sovereign clothe him" (meaning the said William Conyngham) "in the robes and load him" (meaning the said William Conyngham) "with the emoluments of office" (meaning the said office of solicitor general of



our said lord the king of Ireland) By reason of the publishing of which said several false scandalous malicious and defamatory libels the said William Conyngham is much injured in his credit and reputation and brought into great disgrace and contempt and is much prejudiced in his said profession of a barrister at law and has lost divers great gains and profits which he would otherwise have derived therefrom and has lost the esteem and respect of many of his friends and acquaintance to wit at Westminster aforesaid in the said county of Middlesex Whereupon the said William Conyngham saith he is injured, and has sustained damage to the value of ten thousand pounds And therefore he brings suit, &c.

After the declaration had been read,

The Hon. *Thomas Erskine* addressed the Court and Jury as follows:

My Lord, and Gentlemen of the Jury.—Independently of the panel annexed to the record, which enabled me to see that I was before the same jury who, the day before yesterday, tried the defendant for a libel on his majesty's government of Ireland, I could not help observing, from my familiarity with your features, that I was in that situation; a situation which the defendant could have prevented, had he thought proper, because being called upon to answer in an action for slander, it was in his power to have selected another jury, either by a particular application to the court, or by availing himself of his right to expunge from the panel the names of any persons whom he might dislike. But, gentlemen, I am not sure that he has not made a prudent choice, in having the same persons to try him a second time; because it affords him the opportunity of introducing himself to your attention by the character which has been given him with regard to his talents, his education, his morals, and his attachment to the constitution of the country. So far, therefore, am I from wishing you to forget that the defendant is not a low, obscure, contemptible, and uninteresting individual, I am rather desirous that you should contemplate him, as he has been described by his counsel, a gentleman of great talents, possessing the advantage of a powerful and energetic mode of expressing his sentiments in writing; one who well knows how to wield that useful weapon, the pen—that weapon so dangerous when not restrained by morality and by law; one who having raised himself from humble parentage by his intellectual endowments, ought to have recollected, that others who had done the same were as jealous as himself of their fair fame, reputation, and the esteem of the world.

Gentlemen, the defendant, Mr. Cobbett, is called upon to answer for part of the same libel which was laid before you the other day, at the instance of the crown; for, by the mode of libelling which Mr. Cobbett has adopted, he takes care to throw far and wide

his slander, and has thereby rendered it necessary for an individual who has been grievously calumniated, to come forward in vindication of himself against an attack upon his character, through the medium of the magistracy, and the situation which he holds as solicitor general of that part of the United Kingdom, called Ireland. It is not for me to enter into the considerations which determined you in your former verdict; but I confess, it appeared extraordinary to me to hear it stated by the defendant's counsel, that the libel was dictated by a regard for his majesty's government and a zeal for the constitution of the country, when, at the same time, the author describes that part of the United Kingdom as brought into peril by sedition and rebellion, and shaken to its centre by intestine commotions, and, by way of curing that strife and discord, represents his sovereign whom he professes to love, but whom he cannot love if he is guilty of the libel before you, as employing his executive authority at this awful juncture, in selecting persons who, so far from having the capacity to govern a country, are not fit to be constables for the meanest parish.

Because a person in Lord Hardwicke's situation chooses to devote his leisure hours to agricultural pursuits, Mr. Cobbett represents him as a nobleman, "having a good library in St. James's-square, and celebrated for understanding the modern method of fattening a sheep as well as any man in Cambridgeshire." He takes the same liberty with another noble lord with whom we are all well acquainted. I mean lord Redesdale; who is represented as "a very able and strong-built chancery pleader from Lincoln's-inn." Now, gentlemen, is it a disgrace to a man to be a feeder of sheep in Cambridgeshire, or a chancery pleader? Yet, in this strain of ridicule does Mr. Cobbett treat them, for the purpose of making the world believe, that they are unfit persons for the situations their sovereign has called them to fill. In this way he thinks fit to stab, and destroy, the characters of these noblemen, and to inflict such a wound, such a dastardly and malignant wound, that I should change my opinion of you, gentlemen,—and I should be sorry to do so, after so many years acquaintance with most of your countenances—if, after hearing what I shall have to address to you, you could suffer such a libeller to go out of this court unpunished.

Gentlemen, this is a civil action; I therefore trust that you will not suffer your minds to be distracted by those important considerations of the liberty of the press, which have so often agitated parliament and courts of justice. It would ill become me to say any thing against that sacred privilege; seeing that I consider it as almost the only honour of my humble life, that I took an active part in framing the statute for its protection, and assisted the eminent statesmen who brought that law



into parliament which was referred to on the former trial, and so ably commented upon by my learned friend Mr. Adam. The reason of that law was this; it never was disputed, it never can or will be disputed, that a man is entitled to that tranquillity, happiness, and peace of mind, which is the result of an honourable reputation, provided his conduct in life entitles him to it; there is implanted in every man's bosom an invincible sensibility to the opinion of his fellow creatures, which nothing can destroy: it is the foundation of all patriotism, the sentiment which rears states from infancy to maturity, the principle that makes men struggle for distinction, and keeps them in the straight paths of their duty when called to the high offices of magistracy; the laws of society therefore protect mankind in this dearest of all human blessings; and, if any man writes of another that which is injurious to him in his trade, profession, or character, or which tends to expose him to penalties, or brings him into contempt, it is libellous, and the law deems it an object of penal animadversion. To use the language of lord chief justice Holt, "words tending to scandalize magistrates or persons in public trust are more injurious than when spoken against private men," and for this obvious reason, that magistrates are placed on a pinnacle to which the public attention is directed; they know that the public have a right to call on them for an account of their conduct; whereas private men are known only among the circle of their own families or immediate friends.

In the case before you, my client is attacked not only as a private individual, but as a magistrate also; it is, however, necessary, that in appealing for satisfaction, he should come into this court erect in his integrity, and conscious of his innocence.—If he is the man Mr. Cobbett has represented him, it was for the defendant to have justified the libel and to have proved it;—but this he has not so much as attempted to do.—Had he done so with success, I would rather die than hold communion with an abandoned, profligate wretch, such as my client is here represented to be.—It never can have been said, that it was other than a question of law what was a libel which brought a man into contempt; it is a question of fact whether it has been written, and the meaning and intention of the author is also a question of fact.—With respect to libels which have a tendency to bring the government into contempt, the question of law is mixed with fact, upon which the judge is to state general principles, leaving the jury to draw their own conclusions.—It was not lord Mansfield who first departed from this rule; it had been departed from by judges before his time for so long a series, that his lordship considered juries, the moment the publication was proved, without any jurisdiction to consider its tendency, but bound to return their verdict for the crown.—The consequence of this was, that

libellers became popular.—They made use of the office of jury as a stalking horse to cover iniquity; and it thereby became easy to confound the most essential and substantial privileges of the people with the worst offences. To remedy this evil the libel bill was brought in. It was a great satisfaction to my mind, to hear so eminent a person as the noble lord now on the bench, declare to you the other day, that, independently of this law, its principle is the one which he should have adopted. In the present case, I must first prove that the defendant published the libel; but, I shall not expect that you will give damages, unless I also prove, that this libel is of the most malignant, injurious, and destructive nature: that it might lead in its probable consequences to the premature death of the unfortunate person, my client, and that at all events, it strikes most deeply at his honour.

Before the publication of this libel, Mr. Robert Emmet, the son of an eminent physician in Ireland, and brother to a barrister, had mixed himself abroad with seditious persons, who had filled his mind with an enthusiastic notion, that the interest and happiness of Ireland could only be effected by a separation from Great Britain. He directed all his views to the accomplishment of this purpose. He avowed his design; he gloried in it when the sword of justice was lifted up against him; and when he was asked by the judge, why judgment should not be passed upon him, he entered into a declaration of his principles, and avowed his determination to die in defence of them. Lord Norbury, before whom he was tried, fearful of allowing him to avail himself of his situation to foment rebellion, interrupted the unfortunate young man more than once. Highly as every one must approve the conduct of the noble lord, it is, nevertheless, to be lamented, that it should have become necessary to have interrupted him; for, gentlemen, what will you say, when I tell you, that, to the confusion of this libeller, this unfortunate young man, after he retired, made this declaration, "*that such had been the mildness of the government of lord Hardwicke, of which the defendant has spoken with such contempt, because the father of the late minister was a doctor—such, I say, had been its mildness, that he was obliged to push on the catastrophe that took place, lest there should have been an end of rebellion, by the causes of it having ceased.*" Mr. Emmet after he had been prevented from doing any more mischief, so far from complaining that he had been insulted by my client, Mr. Plunkett, openly acknowledged, that it was the wisdom, the moderation, the forbearance, the prudence, and the virtue of the government of lord Hardwicke, that were dissolving rebellion, like enchantment, by working in secret on the minds of a noble-minded people—Mr. Emmet could not wait, for fear the people should be divested of their insane prejudices. They were indeed induced to return to



their duty and their allegiance, in the same manner as the mist is dispersed at the rising of the sun, not from its heat, but the benignity of its beams. Lord Hardwicke, gentlemen, has governed Ireland in a most excellent manner. I have some reason to be acquainted with his private character, as he married one of my nearest relations. He has conducted himself in Ireland with such mildness, that a change in the minds of the people has already begun to take place.—It is not by long speeches that the ruler of a nation discovers his ability to govern; it is not by *sesquipedalia verba*, nor by high-sounding eloquence.—In Ireland particularly, from circumstances which have occurred, the people require to be restrained with a delicate hand—Mr. Burke once said, speaking of America, “you should send her the angel of peace, but you are sending her the destroying angel.” The high characters to whom I allude also appear to have adopted, with respect to Ireland, what the great lord Chatham so well recommended when speaking of America—

“Be to her faults a little blind,  
Be to her virtues ever kind,  
Let all her ways be unconfin’d,  
And clap the padlock on the mind.”

By acting upon this principle, the government of Ireland was daily reconciling the affections of the people; so much so, that Mr. Emmet thought, if he deferred his scheme of insurrection, it would be difficult at a future day to bring them up to the pitch of disaffection which was necessary to its success. The attempt was accordingly made. The result it is unnecessary for me to state. Mr. Plunkett, the plaintiff, was employed to assist the attorney-general in the prosecution against Mr. Emmet; and the case was so clear, that the counsel who were engaged for that unhappy person did not call any witnesses to protect him. Lord Norbury was of opinion, that this did not prevent the counsel for the crown from making observations to the jury. My client was far from desiring to treat with contempt or insult a man who was about to suffer death.—I do say therefore, and Mr. Cobbett was at liberty to prove the contrary if he could have done so, that Mr. Plunkett availed himself of this useful opportunity to warn others from the fate of this wretched young man.—He told them that if they expected France to assist them in the forming of their republic, they would find themselves dreadfully deceived; that the time was not far off when they would see that their leader was actuated by nothing but ambition, by a desire to aggrandize his own family, and a total forgetfulness of every thing that had animated the mind of the great Washington. Was not this the duty of the counsel of the crown? This is what Mr. Plunkett did. This is what I should have done in a similar situation. He made such observations as were calculated to redeem the people of Ireland to

a love of their country and of its government. It was not with a view to Mr. Emmet alone that he addressed the jury, but that the scaffold might not bleed in vain.

Gentlemen, I am by no means desirous of calling in question the high character which was given of Mr. Cobbett on a former day; but if he be the lover of his country which he has been described to you, he must show his attachment by obedience to its laws. The defendant has not merely thrown out the *ambiguas voces*, but, day after day, this lover of the king's government has been writing and sending forth his libels into that distracted country. It is no defence to say, that Mr. Cobbett is an admirer of the king and constitution, if he is constantly libelling the ministers of that king, and transgressing the laws of that constitution. It is nothing for a man to say, “I believe in the merits of my Saviour; I reverence my religion and my God,” if he is hourly in the practice of breaking the commandments.—The defendant does not fall into sin from the infirmities of his nature. The Saviour of man has said, “by their fruits ye shall know them,” and by the libels which I am about to read, you will be enabled to judge of Mr. Cobbett. Although, as I have shown to you, Mr. Emmet had not the least idea of complaining of harsh treatment on the part of my client towards him, the defendant has nevertheless thought proper to publish the following most scandalous libel: “If any one man could be found, of whom a young but unhappy victim of the justly offended laws of his country, had, in the moment of his conviction and sentence, uttered the following apostrophe:—‘That viper, whom my father nourished! He it was from whose principles and doctrines, which now, by their effects, drag me to my grave; and he it is who is now brought forward as my prosecutor, and who, by an unheard-of exercise of the prerogative, has wantonly lashed, with a speech to evidence, the dying son of his former friend, when that dying son had produced no evidence, had made no defence, but, on the contrary, acknowledged the charge, and submitted to his fate.’ Lord Kenyon would have turned with horror from such a scene, in which, although guilt was in one part to be punished, yet in the whole drama justice was confounded, humanity outraged, and loyalty insulted.” Now, gentlemen, what can be said of a man worse than this? Lord Coke, with all his great fame, never has outlived, and never will outlive, the memory of the manner in which he treated sir Walter Raleigh in a court of justice. So revolting was his conduct, that it stands like a blot upon his escutcheon. The conduct imputed to the plaintiff would have been brutal, even if Mr. Emmet had been a perfect stranger to him, instead of the “dying son of his former friend.” *But the assertion is false, or Mr. Cobbett might have proved it to be true.* Was Mr. Cobbett present when Mr.



Emmet made use of these words? And, if not, where had he his authority? Has he any right to insert, in his papers, what renders me the object of universal horror and detestation? No crime can be more detestable than that which the plaintiff is here charged with; that he had "instilled into the mind of this young man principles which, by their effects, dragged him to his grave; and that, by an unheard-of exercise of prerogative, he had wantonly lashed, with a speech to evidence, the dying son of his former friend, when that dying son had produced no evidence, had made no defence, but, on the contrary, had acknowledged his charge, and had submitted to his fate." He goes on to say, that "lord Kenyon would have turned with horror from such a scene, in which, although guilt was in one part to be punished, yet in the whole drama, justice was confounded, humanity outraged, and loyalty insulted." Gentlemen, is this true? Did Mr. Cobbett believe it to be true when he published it? But, notwithstanding this, he sells these libels to this very hour; he sells them in volumes, the more effectually to blast the character of this gentleman to future times.

But Mr. Adam tells you, that his client is a man of strong powers of mind; that he writes from a spirit and principle of his own; that he raised himself to his present respectable situation by unwearied industry; that he was the son of a farmer, and the grandson of a day-labourer; that he is self-taught in the grammar of his native language, and knows how to use it with acuteness and precision. All these qualifications I am ready to allow Mr. Cobbett, and in the exercise of these qualifications I give him the merit of having published this libel; which I will venture to say is one of the most clever, as well as one of the most wicked efforts of his genius.

Gentlemen, there is nothing so popular in England as a judge. The people of England love their laws, and love their judges. But what does this artful libeller do? Under the mask of praising lord Kenyon, and telling us what that noble lord would have done in such and such situations, he seizes the opportunity it affords him of sending forth against the plaintiff, Mr. Plunkett, one of the most abominable libels that ever was brought into a court of justice.

Gentlemen, upon the subject of damages, I contend, the injury the plaintiff has received is one of those which it is almost impossible to compensate by money. I beseech you to make the plaintiff's case your own, and by that standard appreciate what he ought to recover. A jury cannot "minister to a mind diseased," but it can, and I trust will, by an honest verdict, give ample reparation to the gentleman so basely injured, and thereby proclaim the justice of the British law.—The libel goes on to say: "Lord Kenyon must have known, that a noble duke, for having toasted at a drunken club, in a common tavern, to a noisy

rabble, '*the sovereignty of the people*,' was struck by his majesty's command out of the privy council, and deprived of all his offices both civil and military." Gentlemen, this is a libel upon the duke of Norfolk. This libeller is not satisfied with employing single ball, but cannister, grape-shot, old nails, every thing is brought into his battery, and hurled around, so as to do the utmost possible mischief. Here is a libel, too, upon the Whig club. What will my friend Adam say to this? Gentlemen, I assure you the Whig club is not a drunken club, nor are its members a noisy rabble. But, does not Mr. Cobbett know that the duke of Norfolk is not the only man that was struck out of the privy council? Does he not know, that the name of that great statesman, Mr. Fox, was struck out also? And does he not know, that the person who induced his majesty to make that erasure, has since endeavoured to persuade him to strike it in again?—He goes on to say: "if, therefore, any man were to be found who not at a drunken club, or to a brawling rabble, but in a grave and high assembly, not in the character of an inebriated toast-master, but in that of a sober constitutional lawyer, had insisted on the *sovereignty of the people* as a first principle of the English law, and had declared, that by law an appeal lay from the decision of the tellers of the Houses of Parliament, to that of the '*tellers of the nation*;' and that if a particular law were disagreeable to the people, however it might have been enacted with all royal and parliamentary solemnity, nevertheless it was not binding, and the people, by the general law, were exempted from obedience to such a particular law, because the people were the supreme and ultimate judges of what was for their own benefit. Lord Kenyon, if he had been chancellor in any kingdom in Europe, would have shrunk from recommending any such man to the favour of a monarch, while there yet remained a shadow of monarchy visible in the world." Here again this lover of the British constitution attacks that constitution in one of its three branches. We know, gentlemen, that every member of parliament has a right to deliver his free, unbiassed sentiments; and if the plaintiff in the execution of that right did exceed the bounds prescribed by the rules of that House, it would have been a libel on the then Speaker of the Irish House of Commons who now sits on the bench with his lordship, if he had not called him to order. Why will Mr. Cobbett meddle with matters of so high and important a nature?—Gentlemen, the questions for your consideration are simply these: is the defendant the proprietor? Did he persist in the publication? Is it a libel upon the plaintiff, and does it affect him in his character and reputation?—Gentlemen, if the libel be true, if the plaintiff be the abandoned miscreant here described, we ought to draw a curtain before him, and hide him from the world for ever. A thousand poignards are unsheathed



to revenge the death of Emmet, and this inflammatory libel is calculated to direct them to the heart of the plaintiff. If he goes away from this court with small damages, I shall lament that I brought the business before you.—The people of Ireland are deeply interested in the verdict you shall deliver—I love and venerate the people of Ireland—I love those who are loyal, and I love those who are not loyal—because I believe they will shortly become so. I trust your verdict will have the effect of doing away all jealousies and prejudices between the two countries, by showing, that an Irish gentleman is not disfranchised by the union, but that, under the mild administration of the laws of England, he is entitled to, and will receive, the same measure of justice as in his own country.

Gentlemen, I shall not occupy any more of your attention, but shall conclude, with expressing a hope, that I have said nothing capable of widening the breach between Great Britain and Ireland in such disturbed and distracted times.

#### EVIDENCE FOR THE PLAINTIFF.

Mr. *James Pole* sworn.—Examined by Mr. *Garrow*.

Did you ever purchase any numbers of Cobbett's Political Register?—Yes. I did.

Where did you purchase them?—In Pall Mall, at a shop described as Cobbett's Political Register office.

Did you ever buy any other numbers at any other time?—Yes, on the 24th of May,

\* In the report of this case 5 Esp. N. P. C. 136, it is stated that the witness "proved that he had purchased the paper called Cobbett's Political Register, and which contained the libel in question, at the office kept by the defendant for the sale of the paper, in Pall mall, soon after the publication of it, that being the place where those papers were sold; having proved the fact, he was further asked, whether he had since that time purchased any other paper of the same title at the same office? He answered, that he had purchased one of the same title and description, two days before at the same office.

"This evidence was objected to by the defendant's counsel: that this being a question of damages, the purchase of another paper at another time, could not be received in evidence in this action.

Lord *Ellenborough* said, he would admit it, to show, that the papers which purported to be weekly publications of public transactions, were sold deliberately, and vended in the regular course of public circulation: that the paper containing the libel was not published by mistake, but vended publicly, deliberately, and in regular transmission for public perusal; but that he should direct the jury not to take it into consideration in damages." See also 2 Selwyn's N. P. 988, 4th ed.

at Bagshaw's, in Bow-street, Covent-garden.

Had you any opportunity of knowing whether that work has a rapid sale?—Yes; a lady at the shop in Pall Mall told me—

Mr. *Adam*.—My lord, I object to that question.

Lord *Ellenborough*.—I do not think the question necessary. It is enough to prove that the work has been in a course of sale.

Mr. *Garrow*.—Did you find any difficulty in obtaining those numbers?—None at all.

Mr. *Crowe* sworn.—Examined by Mr. *Garrow*.

I believe you have got the patent under the great seal appointing Mr. Plunkett solicitor-general of Ireland?—I have. [Read by Mr. Lowten.]

I believe you have also a copy of Mr. Plunkett's return for the borough of Carlow?—Yes, I have. [Read by Mr. Lowten.]

Have you a copy of the conviction and judgment of Robert Emmet?—I have. [Here the copy was produced and read by Mr. Lowten.]

The Right Honourable *W. Wickham* sworn.—Examined by Mr. *Garrow*.

Were you in Ireland at the time of the trial of Robert Emmet?—I was.

Are you acquainted with Mr. Plunkett, the present solicitor of Ireland?—Yes.

Did he officiate as one of his majesty's counsel?—Yes; he was one of his majesty's counsel.

Was he confidentially advised with on all occasions on which the law officers of the crown are generally consulted?—Yes. Whenever it was necessary, which frequently occurred—almost daily.

Have you looked at the paper in question, called the libel?—I have not.

Cast your eye over the passage, page 808, beginning with "a couple of lawyers without political habits, political information, or honourable connexions." Do you understand those passages to apply to Mr. O'Grady the attorney-general, and Mr. Plunkett the solicitor-general?—Clearly of the attorney and solicitor-general.

The Right Honourable *W. Wickham* cross-examined by Mr. *Adam*.

They were the confidential counsel of the executive government at that time?—Yes; they certainly were.

Both Mr. O'Grady as well as Mr. Plunkett?—Yes, they were.

Both in the confidence of the executive government of Ireland?—Yes, both of them.

Mr. *Barnard* sworn.—Examined by Mr. *Dampier*.

Were you in Ireland at the time of Mr. Emmet's trial?—I was.

Did you see Mr. Plunkett at that trial?—Yes, I did.



Was he employed for the prosecution?—He was.

Did he make any observations to evidence, in the course of that trial?—He did.

Look at this number of Cobbett's Political Register, page 808, and read the passage beginning with the words "If any one man could be found of whom a young but unhappy victim of the laws"—Whom do you conceive to be meant by "a young but unhappy victim of the laws?" I should suppose Mr. Emmet.

Conceiving Mr. Emmet to be the person alluded to by the words "young and unhappy victim of the laws," whom should you suppose to be intended by the passages, "if any one man could be found," and "that viper whom my father nourished," &c.?—I do not know that Mr. Plunkett was nourished by Mr. Emmet's father.

But to whom do you suppose them to apply?—To Mr. Plunkett.

Did Mr. Emmet's counsel make no defence?—None.

Right Honourable *John Foster* sworn.—Examined by Mr. *Nolan*.

I believe you were Speaker of the Irish House of Parliament previous to the Union?—I was.

Do you remember Mr. Plunkett sitting as a member in that House?—I do.

Do you remember whether Mr. Plunkett ever delivered his opinions on the different subjects agitated in debate?—I do not think it proper to state whether or not he delivered his opinions—

Lord *Ellenborough*.—You are only asked to stated whether or not he gave any opinion on the subjects in debate.

Do you recollect whether he ever delivered his opinions on the different subjects agitated in debate?—He frequently took a part in the debates.

Have you read the libel?—I have.

Do you suppose Mr. Plunkett is the person intended in the libel?

Lord *Ellenborough*.—Mr. *Nolan*, read what particular part you mean.

Mr. *Nolan*.—Read the passage "if any one man could be found," &c. p. 809. Taking the whole context of this passage, whom do you conceive to be meant by it?—Taking the whole, I should certainly conceive Mr. Plunkett to be meant by it. Taking the last sentence, I should not.

The Right Hon. *John Foster* cross-examined by Mr. *Adam*.

Mr. Plunkett was a member of the Irish House of Commons previous to the union?—He was.

Did he speak on questions relative to the union between Great Britain and Ireland?—Yes; he did.

Do you recollect any of the expressions or arguments he made use of in the course of those debates?

Lord *Ellenborough*.—It would be a breach of his duty and his oath, to reveal the councils of the nation.

Mr. *Adam*.—What are your reasons for believing that Mr. Plunkett is not the person meant by the latter part of the passage?—I said, that, taking the whole context, I should suppose Mr. Plunkett to be the person meant; but, taking the sentence just read, I should not suppose it was him.

The evidence being closed on the part of the plaintiff, Mr. Lowten read the passages in the Political Register complained of in the declaration.

#### DEFENCE.

Mr. *Adam*.—My Lord, and Gentlemen of the Jury;—The task now devolves on me to occupy a portion of your attention. My learned friend, in his address to you, has made repeated allusions to the proceedings which took place on a former day. He tells you, that he observes the names of the same jurors on the panel, and that he sees the same faces in the box. Gentlemen, I am not, indeed, acquainted, like my learned friend, with your persons; but I know the uprightness of your minds; I know in general the upright character of an English jury; I know your powers of distinguishing between a civil action for the purpose of damages, and a criminal prosecution; I know, too, gentlemen, that you are capable of feeling the grand and leading distinction, that in an action for personal damages, the defendant is capable of justifying his conduct. My learned friend has endeavoured to inflame your minds by adverting to the present state of Ireland, and by repeated allusions to the trial on a former day, with which the present action has no connection whatever. With respect to that trial, you are bound to blot from your memories all recollection of it, to divest yourselves of all prejudices, and to try this action with free and unfettered minds, and to consider, as my lord Kenyon used to say, only what is within the four corners of the record. It is not a libel on my lord Hardwicke which you have now to try; it is not a libel upon my lord Redesdale; it is not a libel upon Mr. Justice Osborne, or Mr. Secretary Marsden; but it is, as I before informed you, a civil action for the purpose of damages. My learned friend, with that power of imagination which he possesses in so eminent a degree, has called up the departed spirits of Mr. Burke and the great earl of Chatham. He has reminded you of the lines made use of by that noble lord, when speaking of America;

"Be to her virtues ever kind,  
Be to her faults a little blind,  
And clap the padlock on the mind."

Gentlemen, I beg you will transpose these lines, and apply the two first to the defendant, Mr. Cobbett;

"Be to his virtues ever kind,  
Be to his faults a little blind,"



and "clap the padlock on your minds," as to the inflammatory effects of those parts of my learned friend's speech, which have no connexion with the subject before you.

Gentlemen, in any thing I am about to say, I beg you will not suppose for one moment, that I am not an enemy to all professed libellers. I can honestly exclaim with the poet.

"Curs'd be the verse, how smooth soe'er it flow,  
That tends to make one virtuous man my foe."

And if I express myself in any way that can be construed into a justification of what has been written and published, I entreat that you will not clothe my client with that blame, and that you will not, from any want of art or ability on my part, visit him therefore with an increase of damages.

There is another point which I think I have a right to complain of in my learned friend's address to you. He has spoken very highly of Mr. Cobbett as a public character, and has made use of the evidence produced on the former trial in favour of the defendant, in order to enhance the damages against him. This I am sure you will not suffer to enter into your consideration.—I hope I shall be able to convince you, that now, when the settled state of Ireland renders a repetition of those animadversions on the government, which have been so long suffered with impunity, unnecessary, it would be an act of severity, if the defendant, who is the last person who has fallen into the snare, should be visited with a vindictive verdict. With respect to the amount of damages (for some damages, I admit, you must give), I earnestly entreat you to consider, that Mr. Cobbett is a man virtuous in private life, that he is the father of a numerous family and the husband of an amiable wife, and that he is not a person who maintains himself by ribaldry in his writings, for those writings are uniformly characterised by an honest zeal in defence of the aristocracy of this country, as well as the other component parts of its government. He left his father's house when he was hardly eighteen years of age; since which time he has been the successful champion, and almost sole defender of the rights of this country, in America. At the moment I am speaking, he is several years under the age of forty, and consequently cannot be supposed to have obtained that independence which would not make the heavy damages which my learned friend wishes to wring from you—but which I am sure he will not wring from you—worse than the severest sentence ever inflicted on any person convicted of the grossest libel. If you were to measure them in the proportion according to which my learned friend calls upon you to measure them, you would doom him to an eternal imprisonment; you would doom him to that situation to which it never was meant, and never will

be meant by an English jury, that any man should be subjected by the consequences of a civil action.

My learned friend says, that this action was brought, in order to show the falsehood of the libel. Gentlemen, I have the best authority for saying, that the defendant never entertained the idea of justifying this libel. It was impossible for him to justify it. For, in order to have satisfied your minds, we must have produced that testimony from which we are shut out by the established laws and usages of parliament. The Bill of Rights expressly says, that no words uttered in parliament shall be spoken any where but in parliament. When, therefore, you are considering that you are called upon to pronounce a verdict of damages high in their nature, and, if you should pronounce it, completely ruinous to Mr. Cobbett,—I humbly submit, gentlemen, that you will not throw out of that consideration the situation in which the defendant is thereby placed.

Gentlemen, there were other topics in the speech of my learned friend, of which I have a right to complain, but he knows I am not in the habit of complaining; I will therefore give over my complaints, and come to the other points upon which he has so eloquently descanted. He has called your attention to the Whig club, to his grace the duke of Norfolk, and to another great and illustrious character, Mr. Fox. Most undoubtedly, it is true, that that illustrious character was struck by his majesty's command, out of the list of privy counsellors. But, gentlemen, this is not all. My learned friend has stated another circumstance. He has told you at the same time that the present chancellor of the exchequer, who counselled and advised his majesty so to do, has since advised him to call that illustrious character to the cabinet, and thereby to strike his name in again. If Mr. Fox had thought proper to bring an action against Mr. Cobbett, or any other person, for so saying, I should have said to him, you are not injured by what has been done, but are even thought a proper person to form part of his majesty's government. *Mutato nomine*, the case applies to the plaintiff in the present action. Were you to give one-fourth, nay one-twentieth part of the sum at which the plaintiff has thought proper to lay his damages, it would produce the effect upon my client which I have already stated.

Gentlemen, this is a grave question. You have already pronounced a verdict which applies to the whole criminality of the case. Mr. Cobbett has been pronounced guilty, not only of the other parts of the publication, but of this very part also. And, if it be unfair to hold up a civil action to criminal punishment, I submit that it would be more especially so in the present case. I, therefore, have every reason to hope, on the part of the character of the defendant, on the part of the wife and children of the defendant, on the part of the



fortune of the defendant that you will be lenient towards him, and that you will not, by excessive damages, doom him to perpetual imprisonment.

My learned friend has treated Mr. Cobbett as the author of this libel, which he represented to you as written with all the nerve and energy which characterizes that gentleman's publications. On the other hand, Mr. Attorney-general the other day, gave you to understand, that he had reasons for believing it was not written by Mr. Cobbett. Now, let us examine a little what the nature of this libel is; and, in what I am about to say, I shall state to you a plain unvarnished tale. I acknowledge the innuendoes to have been fully proved, and therefore what I have to discuss relates generally to the libel itself. It says, "from a rare modesty of nature, or from a rare precision of self-knowledge, lord Kenyon would have acted with reserve and circumspection, on his arrival in a country, with the moral quality of the inhabitants of which, and with their persons, manners, and individual characters and connexions, he must have been utterly unacquainted. In such a country, torn with domestic sedition and treason, threatened with foreign invasion, and acting, since the union, under an untried constitution"—Now let us stop here for a moment and recollect, that in this sentence there is nothing that can be construed into a libel upon the constitution of Ireland, but directly the reverse. It goes on to say, "—if Doctor Addington had required that lord Kenyon should direct a Cambridgeshire earl 'in all his councils,' lord Kenyon would as soon, at the desire of lord St. Vincent, have undertaken to pilot a line of battle ship through the Needles." And then it comes to that part which is the ground work of the present action: "that viper! whom my father nourished! he it was from whose lips I first imbibed those principles and doctrines, which now by their effects drag me to my grave." Now, gentlemen, I entreat you to notice and consider the connexion which this passage has with the other parts of the libel, and, having done so, I am persuaded you will be of opinion with me, that it must have been used in a figurative manner. It then states, "Of lord Kenyon, therefore (Cambricus\* must well know), it never could have been believed, that he himself would lead such a character forward, introduce him to the favour of a deceived sovereign, clothe him in the robes and load him with the emoluments of office. Lord Kenyon must have known, that a noble duke, for having toasted at a drunken club, in a common tavern, to a noisy rabble, "the sovereignty of the people," was struck by his majesty's command out of the privy council, and deprived of all his offices both civil and military. If, therefore, any man were to be found who not at a drunken club, or to a

brawling rabble, but in a grave and high assembly, not in the character of an inebriated toast-master, but in that of a sober constitutional lawyer, had insisted on the sovereignty of the people, as a first principle of the English law, and had declared, that by law an appeal lay from the decision of the tellers of the Houses of Parliament, to that of the "tellers of the nation; and that if a particular law were disagreeable to the people, however it might have been enacted with all royal and parliamentary solemnity, nevertheless it was not binding, and the people, by the general law, were exempted from obedience to such a particular law, because the people were the supreme and ultimate judges of what was for their own benefit. Lord Kenyon, if he had been chancellor in any kingdom of Europe, would have shrunk from recommending any such man to the favour of a monarch, while there yet remained a shadow of monarchy visible in the world." Now, gentlemen, this part of the question relates to a circumstance, the particulars of which, we have been prevented, by the established law of parliament, from diving into; nor do I wish to bring it forward in this place: but I have a right to state, that if any person should have printed, so far back as the year 1799, a speech importing to be a speech made by the plaintiff, Mr. Plunkett, and if it should appear that the passage I have just read to you is an exact copy of a passage in that speech, I submit, that this is a case extremely favourable to my client. My learned friend in the course of his speech has alluded to me. Let me also in my turn beg leave to allude to him. Suppose in a lecture room he had insisted on the sovereignty of the people as a first principle of the English law, and have declared, that by law an appeal lay from the decision of the tellers of the Houses of Parliament, to that of the tellers of the nation; what species of moral offence would it have been to have said that he was an improper person to become the law officer of the crown? Where would have been the moral crime in publishing that my learned friend had made use of those expressions? And more; if it could be proved, that those expressions had been published and attributed to him in newspapers and in pamphlets from the year 1800 up to the present year 1804, and that he had never called upon any of those publishers for an explanation, what sort of damages, I ask, would you have given to my learned friend? Having said this, let me read to you the infamous libel attributed to Mr. Plunkett. It is stated in this book, purporting to be a collection of speeches on the union, that, in the Irish House of Commons, on the 22nd of June 1799, Mr. Plunkett made use of these words: "I, in the most express terms deny the competency of parliament to do this act," (meaning the act of legislative union between the two countries.) "I tell you, that if, circumstanced as you are, you

\* See the note in p. 31.



pass this act, it will be a mere nullity, and that no man in Ireland will be bound to obey it. I make the assertion deliberately, I repeat it, and I call on any man who hears me to take down my words—

Mr. *Erskine*.—I submit to your lordship that this sort of evidence is perfectly inadmissible.

Lord *Ellenborough*.—Altogether so, and when I come to address the jury, I shall certainly take occasion to remind them that they must discharge it totally from their recollection.

Mr. *Adam*.—I feel a considerable degree of embarrassment at this interruption. I did not interrupt my learned friend when he was impressing your minds with the idea that Mr. Cobbett was the author of this libel.—Gentlemen, the point on which I was addressing you was this, that if such words have been attributed to Mr. Plunkett, I was submitting to you, that after five years of silent acquiescence on the part of Mr. Plunkett, after suffering the expressions here attributed to him to be sent to every corner of the kingdom in the form of newspapers and of pamphlets, it would be an extremely hard case to inflict severe damages upon Mr. Cobbett for the mere republication of them.

Lord *Ellenborough*.—I have no objection to your stating this as matter of supposition, but, in the shape of evidence, it cannot possibly be admitted.

Mr. *Adam*.—My lord, I was just about to state, that I did not mean to proceed farther into the detail of this subject. Gentlemen, I wish you to consider in what state this cause stands, and what the circumstances are which entitle my learned friend to demand such excessive damages. I have stated to you the situation of Mr. Cobbett and that of his family, and I trust I have done it with decorum. With regard to the plaintiff, Mr. Plunkett, you have it in evidence, that he was his majesty's solicitor-general in Ireland at the time of the publication, and you also have it in evidence, that he is still in the confidence of the Irish government; but you have no evidence, that any step whatever has been taken to remove him from the situation which he enjoys. Has he received any injury by the publication? Is he not still his majesty's solicitor-general? Is he not still in the high career to honours and emoluments? I ask then, as my learned friend has not produced one single circumstance to prove to you that Mr. Plunkett has been injured by the publication in question,—I ask, I say, whether, under all these circumstances, this is a case which calls for those excessive damages which my learned friend has entreated you to give?

Gentlemen, you have already passed a verdict of guilty upon the information for public criminality: you are now considering an action for private damages. Mr. Plunkett has received redress as to the former, and if you should find, as I suppose you will find, the

defendant guilty (as no justification whatever has been attempted), he will have a farther opportunity of showing to the world, that Mr. Cobbett never attempted to justify the truth of it, that he did not wait to consult counsel, but took his immediate determination to enter no justification upon the record. Gentlemen, I submit that, under these circumstances, you must quit the box before you pronounce a verdict of damages. Let those damages be ever so low, that verdict will be sufficient to establish, that Mr. Plunkett has completely vindicated his character, and will show to the world, that what was alleged against him was untrue. I am persuaded that the plaintiff does not come here to take out of the pocket of Mr. Cobbett a sum, which would not enrich him, but make Mr. Cobbett poor indeed. Gentlemen, I shall not trouble you with any farther observations, but shall conclude with expressing my firm reliance, that you will not inflict a punishment beyond what the justice of the case requires.

#### SUMMING UP.

Lord *Ellenborough*.—Gentlemen; This is an action for reparation in damages for a civil injury done to Mr. Plunkett, the solicitor-general of Ireland, by the publication of a libel, with the contents of which you have been made fully acquainted. The defendant's counsel has admitted, that the preliminary proof has been adduced, and no justification appears on the record. The only question, therefore, for your consideration is, the quality of the libel, and the measure of damages you will give in the exercise of your sound discretion. You will lay out of your consideration the antecedent matter of the criminal trial, on which the defendant has been convicted. This is an action for the injury done to the fair fame of an individual, and to ascertain the damages to which he is entitled. That which gave the public a title to reparation, ought not, however to operate to the abridgment of the right of a particular individual who complains of a private injury. It will be for you to consider carefully the circumstances of the case and the malignity of the libel, and to say, what reparation in damages the plaintiff ought to receive. These damages are not to be reduced by the poverty of the defendant, if he is poor, nor increased by his wealth, if he is rich; but are to be admeasured by the size and magnitude of the injury done to the plaintiff. The only way of measuring the extent of the injury done to a man's fame is, by asking yourselves, what would make your mind and feelings an adequate compensation if such a libel as this were true? That it is not true is admitted. If it were true, it would have been open to the defendant to have justified it on the record.\* If a man thinks proper to assert

\* As to this see 2 Selwyn's *Nisi Prius*, p. 986, note, 4th edition.



that which it is difficult to prove, or represent that which cannot be revealed, they are difficulties of his own creating, and the libel must go forth accredited or discredited, according to the circumstances. But, gentlemen, as to the first part of the libel, I take the principal gravamen of the injury to lie in that passage which commences with the words, "that viper whom my father nourished!" To this passage I am desirous of drawing your particular attention; and really, it seems hardly possible to depict a person in more odious colours than are here employed. I would ask, what could give more pain to a virtuous mind than to insinuate that he had acted like our common enemy, "the seducer 'ere the accuser of mankind?" that he had first seduced and afterwards destroyed whom he had first corrupted? that he had instilled into the mind of Mr. Emmet, the son of his friend, principles of disloyalty and rebellion, and had afterwards, not in the ordinary exercise of his duty, but "with a speech to evidence" wantonly lashed the man to whom he was under family obligations, and who was the pupil of his own sedition? It appears to me hardly possible to depict any one under more odious colours. It matters not whether the defendant be the author or only the publisher and adopter of another man's malignity. If he chuses to send it into the world, he is criminal and guilty, and is liable to all the consequences. Leaving the other parts of the libel out of the question, I shall shortly call your attention to that part which relates to the plaintiff. It says, "if any one man could be found of whom a young but unhappy victim of the justly offended laws of his country had, in the moment of his conviction and sentence, uttered the following apostrophe—"That viper whom my father nourished!"—Is it possible to state any thing more detestable, than that a person, who had been nourished by the father of a man who had rendered himself amenable to the infliction of the law, should insult and sting the son to death? "He it was from whose lips I first imbibed those principles and doctrines, which now by their effects drag me to my grave; and he it is who is now brought forward as my prosecutor, and who, by an unheard of exercise of the prerogative, has wantonly lash-

ed with a speech to evidence the dying son of his former friend, when that dying son had produced no evidence, had made no defence; but, on the contrary, had acknowledged the charge, and had submitted to his fate.—Lord Kenyon would have turned with horror from such a scene, in which, although guilt was in one part to be punished, yet, in the whole drama, justice was confounded, humanity outraged, and loyalty insulted." Gentlemen, this is the part which particularly presses on my mind. As to the language which the plaintiff may be supposed to have held in the Irish House of Parliament, it might, if true, render him unfit for recommendation to his majesty—it might be improper. This, however, the defendant has not attempted to justify. But it is the other part of the libel, containing the most bitter and acrimonious observations that can possibly be made use of, to which I wish to confine your attention.—Consider what situation Mr. Plunkett is in. He holds an office at all times and in all countries of an invidious nature; that of a public prosecutor, whose denunciations may probably terminate in the death of the criminal. The libel states, "that such a scene was acted as lord Kenyon would have turned away from with horror; a scene, in which, although guilt was in one part to be punished, yet, in the whole drama, justice was confounded, humanity outraged and loyalty insulted. To say of a public officer of the crown, that he has acted in such a scene, is to imply that he is forgetful of every principle of justice, and is placing him in the lowest possible state of degradation. These, gentlemen, are the circumstances of this case. It is for you to say, without considering the capacity of the defendant as to his wealth or poverty, what reparation the plaintiff is entitled to receive from the justice of his country. Whatever you may determine upon, I have no doubt the amount will be such as ought to satisfy the party aggrieved; and, with these few observations, I leave the decision in the hands of those to whom, by the constitution, it is solely referred.

*The Jury* retired for about twenty minutes, and returned with a verdict for the plaintiff—**Damages 500*l.***



672. The whole Proceedings before the Courts of King's-Bench and Exchequer in Ireland, and before the Court of King's-Bench in England, in the Case of the Hon. ROBERT JOHNSON, one of the Judges of his Majesty's Court of Common Pleas in Ireland, on an Indictment for composing, writing, publishing, and printing certain Libels on the Right Hon. PHILIP Earl of HARDWICKE, Lord Lieutenant of Ireland; the Right Hon. JOHN Lord REDESDALE, Lord High Chancellor of Ireland; the Hon. CHARLES OSBORNE, one of the Judges of the Court of King's-Bench in Ireland; and ALEXANDER MARSDEN, Esq., January 18—November 23: 45 & 46 GEORGE III. A. D. 1805.

#### PRELIMINARY PROCEEDINGS.

On Friday the 18th of January 1805, Mr. Justice Johnson was arrested at his house in the county of Dublin, under a warrant signed "ELLENBOROUGH," endorsed by J. BELL, a magistrate of the county of Dublin, and said to be so endorsed pursuant to the statute 44 Geo. 3, c. 92, it being the first attempt to carry the said act into execution. For the better understanding the arguments in this important case the statute is here inserted.

Anno quadregesimo quarto Georgii III. Regis.

#### CAP. XCII.

*An Act to render more easy the apprehending, and bringing to Trial, Offenders escaping from one Part of the United Kingdom to the other, and also from one County to another.*  
[20th JULY, 1804.]

WHEREAS it frequently happens that persons, against whom warrants are granted by justices of peace for the several counties and places in Ireland, escape into other counties or places, out of the jurisdiction of the justices of peace granting such warrants; and it may also frequently happen, that persons having committed offences in some county or place in Ireland, may reside or be in some other county or place, out of the jurisdiction of the justice or justices of the county or place in which such offence was committed, whereby such offenders may or will easily avoid being punished for the offences wherewith they are charged; be it therefore enacted by the king's most excellent majesty, by and with the advice and consent of the Lords Spiritual, and Temporal, and Commons, in this present parliament assembled, and by the au-

thority of the same, that from and after the first day of August, one thousand eight hundred and four, in case any person against whom a warrant shall be issued by any justice or justices of the peace of any county, city, liberty, town, or place, within Ireland, shall escape, go into, reside, or be, in any other county, city, liberty, town, or place, out of the jurisdiction of the justice or justices granting such warrant as aforesaid, it shall and may be lawful for any justice or justices of the peace for the county, city, liberty, town, or place where such person shall escape, go into, reside, or be, and such justice or justices is and are hereby required upon proof being made upon oath of the hand-writing of the justice or justices granting such warrant, to endorse his or their name or names on such warrant which endorsement shall be a sufficient authority to the person or persons bringing such warrant, and to all other persons to whom such warrant was originally directed, to execute such warrant in the county, city, liberty, town, or place, where the same was endorsed, and to apprehend and carry such offender or offenders before the justice who endorsed such warrant, or before some other justice or justices of such other county, city, liberty, town, or place, where such warrant was endorsed; and in case the offence for which such offender shall be apprehended shall be bailable in law, and such offender shall be willing and ready to give bail for his or their appearance at the next assizes or general gaol delivery, or next general quarter sessions of the peace to be held in and for the county, city, liberty, town, or place, where the offence was committed, such justice or justices by whom such warrant



was endorsed, or such other justice before whom any such offender or offenders shall be brought, shall and may proceed with such offender or offenders, and take bail for his or their appearance at the next assizes or general gaol delivery, or at the next general quarter sessions of the peace to be held in and for the county, city, liberty, town, or place, where such offence was committed, in the same manner as the justices of the peace of the proper county, city, liberty, town, or place, should or might have done in such proper county, city, liberty, town, or place; and the justice or justices so taking bail as aforesaid, shall deliver the recognizance, together with the examination or confession of such offender or offenders, and all other proceedings relating thereto, had before such justice, to the constable or other officer or officers, or person or persons so apprehending such offender or offenders as aforesaid, who are hereby required to receive the same, and to deliver over such recognizance, examination, or other proceedings, to the clerk of the crown or clerk of the peace of the county, city, liberty, town, or place, where such offender or offenders is or are required to appear by virtue of such recognizance; and such recognizance, examination, and confession respectively, shall be as good and effectual in law to all intents and purposes, and of the same force and validity, as if the same had been entered into, taken, or acknowledged, before a justice or justices of the peace in and for the proper county, city, liberty, town, or place, where the offence was committed, and the same proceedings shall be had thereon; and in case any constable, officer, or other person to whom such recognizance, examination, confession, or other proceedings shall be delivered as aforesaid, shall refuse or neglect to deliver over the same to the clerk of the crown or clerk of the peace of the county, city, liberty, town or place, where such offender is required to appear by virtue of such recognizance, such constable, officer, or other person, shall forfeit the sum of five pounds Irish currency, to be recovered against him by bill, civil bill, plaint, or information, in any of his majesty's courts of record in Ireland, by any person or persons who will prosecute or sue for the same, wherein no essoign, protection, or wager of law, shall be allowed, nor more than one imparlance; and in case the offence for which such offender or offenders shall be apprehended and taken in manner aforesaid, shall not be bailable in law, or such offender or offenders shall not give bail for his or their appearance at the next assizes or general gaol delivery, or next general quarter sessions of the peace to be held in and for the county,

city, liberty, town, or place, where the offence was committed, to the satisfaction of the justice before whom such offender or offenders shall be brought, then and in such case the constable, officer, or other person so apprehending such offender or offenders, shall carry and convey such offender or offenders before one of his majesty's justices of peace of the proper county, city, liberty, town, or place, where such offence was committed, there to be dealt with according to law.

2. And be it farther enacted, that no action of trespass, false imprisonment, or indictment, or other action, shall be brought, sued, commenced, or prosecuted by any person or persons whatsoever, against the justice or justices who shall endorse such warrant, for or by reason of his or their endorsing such warrant: provided always, that such person or persons shall be at liberty to bring or prosecute his or their action or suit against the justice or justices who originally granted such warrant, in the same manner as such person or persons might have done in case this act had not been made.

3. And whereas it may frequently happen that felons and other malefactors, in that part of the United Kingdom called Ireland, may make their escape into that part of the United Kingdom called Great Britain, as also that felons and other malefactors in that part of the United Kingdom called Great Britain, may make their escape into that part of the United Kingdom called Ireland, whereby their offences often remained unpunished, there being no sufficient provision, by the laws now in force in Great Britain and Ireland respectively, for apprehending such offenders and transmitting them into that part of the United Kingdom in which their offences were committed: for remedy whereof be it farther enacted, that, from and after the first day of August one thousand eight hundred and four, if any person or persons against whom a warrant shall be issued by any of the judges of his majesty's Court of King's-bench, or any justice of Oyer and Terminer or gaol delivery, or any justice or justices of the peace or other person having authority to issue the same within Ireland, for any crime or offence against the laws in force in Ireland, shall escape, go into, reside, or be in any place in England or Scotland respectively, it shall and may be lawful for any justice of the peace of the county, stewartry, riding, division, city, liberty, town, or place, in England or Scotland respectively, whither or where such person or persons shall escape, go into, reside, or be, to endorse his name on such warrant, which warrant so endorsed shall be a sufficient authority to the person or persons bringing such war-



rant, and to all persons to whom such warrant was originally directed, and also to all constables or other peace officers of the county, stewartry, riding, division, city, liberty, town, or place, where such warrant shall be so endorsed, to execute the said warrant in the county, riding, division, city, liberty, town, or place, where it is so endorsed, by apprehending the person or persons against whom such warrant is granted, and to convey him, her, or them by the most direct way into Ireland, and before one of the justices of the peace of the county in Ireland, living near the place and in the county where he, she, or they shall arrive and land; which justice of the peace is hereby required to proceed with regard to such person or persons as if the said person or persons had been legally apprehended in the said county in Ireland.

4. And, for remedy of the like inconveniency by the escape into Ireland of persons guilty of crimes in England or Scotland respectively, be it farther enacted, that, from and after the first day of August, one thousand eight hundred and four, if any person or persons against whom a warrant shall be issued by any of the judges of his majesty's Court of King's-bench, or of the courts of great sessions in Wales, or any justice of Oyer and Terminer or gaol delivery, or any justice or justices of the peace of any county, stewartry, riding, division, city, liberty, town, or place, within England, or Scotland respectively, or other person having authority to issue the same within England or Scotland respectively, for any crime or offence against the laws of England or Scotland respectively, shall escape, go into, reside, or be in any place of that part of the United Kingdom called Ireland, it shall and may be lawful for any justice of the peace of the county or place in Ireland, whither or where such person or persons shall escape, go into, reside, or be, to endorse his name on such warrant, which warrant so endorsed shall be a sufficient authority to the person or persons bringing such warrant, and to all persons to whom such warrant was originally directed, and also to all sheriffs officers, constables, and other peace officers of the county or place in Ireland where such warrant shall be so endorsed, to execute the said warrant in the county or place in Ireland where it is so endorsed, by apprehending the person or persons against whom such warrant may be granted, and to convey him, her, or them, by the most direct way into England or Scotland respectively, and before one of the justices of peace of the county or stewartry, in England or Scotland respectively, living near the place and in the county where he, she, or they, shall arrive and land, which justice of peace is

hereby authorized and required to proceed with regard to such person or persons as if such person or persons had been legally apprehended in the said county or stewartry of England or Scotland respectively.

5. And be it further enacted, that the expense of removing prisoners as aforesaid, to any place in England, Scotland, and Ireland respectively, shall be repaid to the person defraying the same by the treasurer of the county in England or Ireland respectively, or by the sheriff or steward depute or substitute of the county or stewartry in Scotland in which the crime was committed, the amount of such expence being previously ascertained by an account thereof verified upon oath before two of the justices of the peace of said county or stewartry, and allowed and signed by them; and such treasurer, sheriff, or steward depute, or substitute, shall be allowed such payments in their respective accounts.

6. And be it further enacted, that the treasurers of the several counties in Ireland, who have paid the amount of any such expences so ascertained as aforesaid, shall lay the said account, together with the allowance of the same so signed as aforesaid, before the grand juries of their respective counties, at the assizes holden for such counties next after such expences shall be paid, or at any subsequent assizes; and it shall be lawful for such grand juries, and they are hereby respectively required to present a sum equal to the amount of such expences, to be raised from the county at large, for the purpose of reimbursing such treasurers.

7. And whereas it frequently happens, that persons having stolen or otherwise feloniously taken away money, chattels, goods, or other effects, in one of the parts of the United Kingdom, carry the same into another part of the said United Kingdom, and there have the said money, chattels, goods, or other effects, in their possession or custody; and doubts may be entertained whether they could be indicted and tried in that part of the United Kingdom where such offenders have the said money, chattels, goods, and other effects, in their possession or custody, as the original offence was not committed in such part of the said United Kingdom; be it therefore further enacted and declared, that, from and after the first day of August, one thousand eight hundred and four, if any person or persons having stolen or otherwise feloniously taken money, chattels, goods, or other effects, in any one of the parts of the said United Kingdom, shall afterwards have the same money, goods, chattels, or other effects, or any part thereof, in his, her, or their possession or custody, in any other part of the United Kingdom, it shall and may be lawful to indict, try, and punish such person or



persons, for theft or larceny, in that part of the United Kingdom where he, she, or they shall so have such money, chattels, goods, or other effects, in his, her, or their possession or custody, as if the said money, chattels, goods, or other effects, had been stolen in that part of the United Kingdom.

8. And be it further enacted, that if any person or persons in any one of the parts of the United Kingdom shall hereafter receive or have any chattels, goods, or other effects stolen or otherwise feloniously taken in any other part of the United Kingdom, knowing the same to have been stolen or otherwise feloniously taken; every such person or persons shall be liable to be indicted, tried, and punished for such offence in that part of the United Kingdom where he, she, or they shall so receive or have the said chattels, goods, or other effects, in the same manner to all intents and purposes as if the said chattels, goods, or other effects, had been originally stolen or otherwise feloniously taken, in that part of the United Kingdom in which such person shall so receive or have such chattels, goods, or other effects respectively.

On the evening of the day on which Mr. Justice Johnson was arrested, a writ of Habeas Corpus, at common law, was sued out, returnable immediately before the Lord Chief Justice of the court of King's-bench of Ireland, who ordered the parties to attend, and the return to be made, on the next morning, Saturday the 19th, at twelve o'clock.

On Saturday, January 19th, the party was brought before the Lord Chief Justice, and the return made.

George the third, by the grace of God, of the United Kingdom of Great-Britain and Ireland, King, Defender of the Faith, and so forth, to Edward Medlicott greeting, we command you, that you have the body of the hon. Robert Johnson detained in your custody, as it is said, under safe and secure conduct, or by whatsoever other name, addition of name or surname, said Robert Johnson is called in the same, before the right hon. the chief justice of our court of Chief Place in Ireland, at his house in Merrion-square, Dublin, immediately on sight or receipt thereof—together with the day and cause of his the said Robert Johnson's being so taken and detained, to do and receive what shall then and there be considered concerning him, and have you then and there this writ, witness William Downes, esq. at the King's Courts, Dublin, the 28th day of November, in the 45th year of our reign.

Examined by WALTER BOURNE,  
*Deputy clerk of the Crown.*

H. & R. CONWAY.

J. S. EMERSON.

In obedience to the annexed writ, I do hereby certify, that I am a magistrate and peace-officer of the county of Dublin, and that I apprehended and arrested and took into my custody, on the 18th day of January, 1805, at Milltown, in the said county, the hon. Robert Johnson, in the annexed writ named; and that my authority for so doing was, a warrant from the right hon. lord Ellenborough, lord chief justice of England, duly signed and sealed by him—and which warrant is in my possession, and is in the words and figures following: "England to wit.—Whereas, it is certified to me by one of the clerks in the Crown-office, that the hon. Robert Johnson, late of Westminster, in the county of Middlesex, esq. one of the judges of the court of Common Pleas in Ireland, stands indicted in his majesty's court of King's-bench, at Westminster, for certain misdemeanors, in composing, writing, publishing and printing, at Westminster aforesaid, certain scandalous and malicious libels, of and concerning his majesty's government of Ireland, the right hon. Philip Earl of Hardwicke, general and general-governor of Ireland; the right hon. John Lord Redesdale, his majesty's lord chancellor and keeper of the great seal, and one of his privy council of Ireland; and the hon. Charles Osborne, one of the justices assigned to hold pleas, before the king, himself, in Ireland, against the peace, &c.—to which indictment the said Robert Johnson hath not as yet appeared. These are therefore to will and require, and in his majesty's name, strictly to charge and command you and every of you on sight hereof to apprehend and take the body of the said Robert Johnson, and bring him before me or one other of the judges of his majesty's court of King's-bench, if taken in or near the city of London, or Westminster; if elsewhere, before some justice of the peace near to the place where he shall be herewith taken, to the end that he may become bound with sufficient sureties for his appearance in his majesty's court of King's-bench, at Westminster, and to plead within the first eight days of next term to the said indictment, and to try the same at the sitting of Nisi Prius, to be held after the same term in and for the county of Middlesex, and personally to appear in the same court on the return of the postea, in case he shall be convicted, and be further dealt with according to law, hereof fail not at your peril. Given under my hand and seal the 24th day of November, 1804. Ellenborough. (Seal.) To Edward Williams, gentleman, my tipstaff, and to all chief and petty constables, headboroughs, and tythingmen, and all others whom it may concern." And which warrant (the said Robert Johnson having at the time



of the perfection thereof, and ever since resided at Milltown aforesaid in the said county) was, previous to the said arrest, duly endorsed with his name by John Bell, esq. a justice of the peace for the said county; and, after I had arrested the said Robert Johnson, under the said warrant, so endorsed as aforesaid, I brought him before the said John Bell, at Milltown aforesaid, in the county aforesaid, to be dealt with according to law—he, the said John Bell, having been present at the said arrest: and the said Robert Johnson then and there declined and refused to tender any bail, or to enter into recognizance, although requested so to do by the said John Bell, for the purposes stated in the warrant of the said lord chief justice; thereupon the said John Bell directed me to detain the said Robert Johnson in my custody; and, at the same time, handed to me a warrant, under the hand and seal of the said John Bell, now in my possession, and which is in the words and figures following:—“Whereas a warrant, issued under the hand and seal of the right honourable lord Ellenborough, lord chief justice of England, bearing date the 24th day of November, 1804, and directed to Edward Williams, gent. his lordship’s tipstaff, and to all chief and petty constables, headboroughs, and tythingmen, and all others whom it may concern, to apprehend and take the body of the hon. Robert Johnson, late of Westminster in the county of Middlesex;—and whereas, the said Robert Johnson, at the time of issuing of the said warrant, and ever since, hath resided in the county of Dublin, in Ireland, and for the purpose of authorizing the execution of said warrant, I, John Bell, esq. one of his majesty’s justices of the peace for said county, did duly endorse my name on the said warrant;—and whereas, the said warrant hath been executed, and the body of the said Robert Johnson hath been brought before me accordingly;—and whereas, the said Robert Johnson hath declined, and altogether refused, to give or offer any bail for the purposes specified in the said warrant of the said lord Ellenborough, or to enter into a recognizance in his own name, for such purpose, which, by the consent of the attorney-general I offered to accept. These are, therefore, to authorize and require you forthwith to convey the said Robert Johnson in the most direct way into England, and then to bring him before the next justice of the peace, near the place where he shall arrive or land; and for so doing, the aforesaid warrant of the said lord Ellenborough, and the endorsement of my name thereon, and these presents shall be to you and each of you a sufficient authority. 18th

January, 1805. John Bell. (Seal.) To Edward Medlicott, esq. and his assistants.” And I did accordingly take and do still detain the said Robert Johnson in my custody under the several warrants and authorities aforesaid, in order to convey him by the most direct way into England; and I did accordingly for that purpose upon the day of his arrest, aforesaid, and immediately after it, bring him into the city of Dublin (being the most direct way from Milltown aforesaid to England) where the said several warrants were duly endorsed by Frederick Darley, esq. a justice of peace in and for the said city; and I was then about immediately to proceed to England with the body of the said Robert Johnson, there to bring him before the next justice of the peace near the place where he should arrive and land, when I was served with the annexed writ, by which I have been delayed from proceeding to England with the said Robert Johnson, under the several warrants and authorities aforesaid, and under the provisions and authority of an act passed in the 44th year of the reign of his present majesty, entitled, “An act to render more easy the apprehending and bringing to trial offenders escaping from one part of the United Kingdom to the other, and also from one county to another.” And I do further certify, that I have the body of the said Robert Johnson on the day and at the place in the said annexed writ, as by the said writ I am commanded, so answers EDWARD MEDLICOTT.

The *Chief Justice* was assisted by six of the other judges. A seventh came on the last day of the argument. The counsel of Mr. Justice Johnson then required time to consider of the return, as it was of a very peculiar nature, no instance of a like kind having ever occurred before, and the return having been then instantly made. To this the Attorney-general refused to consent.

Mr. Justice Johnson then (though in a weak state from ill-health) stated the following circumstances of his case, to induce the Court to grant him time until the next day:—

He said, it was true, that he had so long ago as early in the last summer, heard it reported that it was the intention of the king’s administration in Ireland, to charge him in England with some misdemeanor, said to have been committed there in the publication of certain papers, which were said to be libellous. It was reported, that manuscripts had been procured in England from the publisher of the papers, which some persons, said to be acquainted with the hand-writing of Mr. Justice Johnson, would swear they *believed* to be of his hand-writing, and that, upon this evidence, such a charge was intended to be brought against him. He had heard the same report, grounded upon similar cir-



cumstances of evidence, circulated with equal confidence, as to other persons whose names were publicly mentioned by persons supposed to form a part of the administration. The circulation of these reports gave him no uneasiness, and indeed did not engage his attention. He did not perceive, from a perusal of the published papers imputed to him, that they contained any matter which could involve the writer in any moral censure; and as to the censure of the law, as the law of the land *then* stood, and as the eternal principles of justice he hoped would always preserve it, he was conscious that he could not be charged in a place where the same law did not enable him to defend himself; and if he should be charged where the law did enable him to defend himself, he was equally certain, from his own consciousness of the facts, that no such charge could succeed; he remained, therefore, perfectly indifferent to the bustle of these reports, and though in a very precarious state of health, he went the summer circuit. After his return, his illness having increased, he was obliged to put himself under the care of physicians, and for above four months previous to his arrest had been confined to his house, and under the necessity of having constant medical attendance. In the month of September, Mr. Justice Johnson had been informed by a friend (who had just heard it reported) that the prosecution talked of was of a much more serious nature than had been at first imagined; for that he had been told, that a bill had been brought into parliament, and had passed in the month of July last into a law, which by an *ex-post facto* construction would over-reach the fact (with which it pleased some people here to charge him) and under which it was intended to arrest him in Ireland, to have him carried in custody to England, and tried there; for the avowed purpose of depriving him of all means of defence, inasmuch as it was said that the act had, subsequently to the fact having been committed, erected a jurisdiction over his person to which he had not been before subject, and while it provided for the expense of his being transmitted into England, it provided no power by which he could summon one witness on his behalf from this country, where, as he certainly had resided at the time the fact laid to his charge was committed, his defence could alone arise. It was added, that this act had been brought into parliament by the brother-in-law \* of the person in whose name, and at whose instance, Mr. Justice Johnson was to be prosecuted. This account of the act appeared so extraordinary, that it was laid before counsel for their

consideration: they were of opinion, that although the act was framed in a manner so loose and inaccurate as to make the matter a question of construction; yet, that upon a fair interpretation of the law, it did not appear to include such a case as that laid before them, but had for its objects only those persons, who having committed offences while they *resided* in one part of the United Kingdom, had *escaped*, departed from it, or fled, in order to elude justice. This opinion, he said, was doubly satisfactory; not only relieving his own case from a very oppressive operation of law, but also relieving the persons above alluded to from the possibility of having it supposed that they had, in bringing the bill into parliament, a particular case, in the event of which they were interested, in view. Mr. Justice Johnson said, that soon after his illness increased so much, that he became utterly incapable of attending to any business, and continued in that state until about the beginning of December last, when he began, in some degree, to recover, and his physicians strongly recommended it to him to try (as soon as any increase of strength and a milder state of the weather would enable him to travel) the effect of the water at Bath. About this time, a friend of his having happened to call on him, the subject of his going to Bath was mentioned; and he said, he had apprehensions, that if he should go, some effort to arrest his person, while there, might be made under this charge of a supposed misdemeanor. His friend said, he could not conceive, from the character of lord Hardwicke, that he would permit such an advantage to be taken; and that he would himself either speak to lord Hardwicke, or convey Mr. Justice Johnson's wishes, and express his hopes that some assurance might be given that while his health compelled him to remain at Bath, he should be permitted to continue there unmolested. This was accordingly done, and Mr. Marsden was requested to apply to the lord-lieutenant on the subject. About the 10th or 11th of December, Mr. Marsden sent as an answer the following note:

"Objection will not be made to Mr. Justice Johnson going to England in the course of a month; he must be prepared to give bail then himself in 1,000*l.*; and two sureties in 500*l.* each. Adopting this course, it will not be considered necessary to put in force the warrant of the Chief Justice in England, under which Mr. Justice Johnson might be sent to England."

This note seemed to have conceded a favour of rather an extraordinary nature,—namely, that if Mr. Justice Johnson should, by causing bail to be put in, render any arrest of his person an act of false imprisonment; why then, indeed, he need not be under any apprehension of being arrested.

\* "The two foremost persons upon the committee for bringing in that bill, were Mr. Perceval, the brother-in-law of Lord Redesdale, and Mr. Yorke, the brother of Lord Hardwicke." 2 *Plowden's Hist. of Ireland* 386.



However, as the terms of the note seemed to allow a month's time for the performance of this liberal condition, no immediate answer was returned. Mr. Marsden, however, on the 13th of December thought proper to send the following note.

*" Dublin Castle, 13th Dec. 1804.*

" Dear Sir ;

On receiving your note of the tenth instant, I expected to have learned whether Mr. Justice Johnson had determined to proceed to England, as was stated by you to be his wish to do. Finding that you had not been charged with any answer, I am desired to request that you will learn from Mr. Justice Johnson whether it be his intention to go to England within the time mentioned ;—for should this not be the case, or should he continue to decline charging you with any answer, such proceedings will be taken, under the warrant, for his apprehension, as may be directed.

" Your's very truly,  
" A. MARSDEN."

" To ———— "

This peremptory demand and threat, so soon following the above liberal offer, became serious, particularly in the enfeebled state in which Mr. Justice Johnson said he then was, and the great severity of the weather ; and accordingly the two notes were laid before counsel to advise what should be done. They were of opinion, that, as by giving bail in the manner demanded, all question of the operation of the above-mentioned statute upon the case would be given up, that a copy, if possible, of the instrument or document, called in Mr. Marsden's notes a warrant, should be procured, in order that they might have a more accurate consideration of the case. For this purpose an application was made to the lord-lieutenant, which, for very obvious reasons, it was deemed prudent should be made through the chief secretary of state. Accordingly, on the 17th of December, the following note was written to sir Evan Nepean :

" Sir ;—In consequence of the state of my health, by which I have been confined for above two months, and of the recommendation of my physicians, to make use of the Bath waters as soon as I should be able to travel, a friend of mine was so good as to solicit his excellency the lord lieutenant for me, that he would be pleased to grant me permission to go to England ; and, at the same time (from some rumours I had heard, that it was the intention of his excellency to cause me to be prosecuted in England for some misdemeanor said to be committed by me there), I did request of the gentleman, who had undertaken the

matter for me, to express my hope that his excellency's known mildness and humanity would afford me his protection during my stay at Bath, by an assurance, that no arrest of my person should take place there ; as from my feeble state of health, and necessary absence from friends and advice, I should be but ill able, in such a situation, to meet so deep a proof of his excellency's displeasure.

" In consequence of this solicitation, two notes were forwarded from Mr. Secretary Marsden ; though these notes do not contain any official form (as from the humble and private nature of my application they need not) yet, as the first conveys to me his excellency's indulgent permission to go to Bath ; coupled, however, with the conditions which he was pleased to annex, of my giving bail and also the precise measure of bail which the magistrate should take ; and, as the second states, that Mr. Secretary Marsden is desired to require an immediate answer to the first. I cannot have any doubt that these papers were intended to convey to me his excellency's commands. I deem it therefore proper, from the respect I feel, and the duty I owe to his excellency, to request that my answer may be laid before him by you, and that you will have the goodness to acquaint his excellency, that even if his excellency's permission to me to go to Bath were unshackled with any condition, it would not be in my power, in my present enfeebled state of health, to take immediate advantage of it at this season—and in the present state of the weather—nor until some favourable alteration, which my physicians hope for soon, shall take place ; and that you will also have the goodness to say that I am at this moment totally ignorant (except from vague and general conversation, and to no greater extent than I have already mentioned) of the precise nature of the fact with which I am charged, and of the precise nature of the instruments under which proceedings are threatened against me here—no such matter having ever come before me in the course of my experience. I therefore humbly hope, that his excellency will direct a copy or copies of such papers or documents, as he may deem proper, to be given to my solicitor, that I may have the benefit of legal advice in such a situation—assuring his excellency, that it is my intent to be directed by the opinion of impartial and skilful men, and to submit to whatever course they shall deem right. At present I have nothing to lay before counsel but vague rumour, from which it cannot be supposed they can form a proper opinion :—I do not mean, in making this request, to desire the possession of any



secret of the crown, as the prosecutor.—  
I am, sir, your very obedient servant,  
“ ROBERT JOHNSON.”

“ Milltown, near Dublin,  
17th Dec., 1804.

“ To sir Evan Nepean.”

On the twenty-first of December, sir Evan Nepean sent the following answer.

“ Dublin Castle, 21st Dec., 1804.

“ Sir ;—Your letter of the 17th instant has been delivered to me by your servant, and, in reply to it, I am to inform you, that the communications which have taken place between your friend and Mr. Marsden were altogether private ; and therefore, you are not to consider the notes of Mr. Marsden, which you very properly observe do not purport to be official, as conveying to you, in any respect, the lord lieutenant's pleasure. I have, however, no difficulty in saying, that if you are still disposed to go to England, I have no doubt his excellency, upon a proper application, will be very ready to comply with your wishes ; but as to his extending, in that event, a protection against arrest in England for misdemeanors supposed to have been committed by you there, it is, as you must very well know, altogether out of his excellency's power to afford you any such protection ;—however, the apprehension of such arrest, for a bailable offence, cannot, I should presume, constitute any objection to your going to England, according to your original intention, and the proposal of your friend to Mr. Marsden ; on the contrary, I should suppose you would feel it due to your situation to meet any charge which has been preferred against you, without any appearance of difficulty or delay.

“ With respect to the latter part of your letter, which expresses a hope that his excellency will direct that your solicitor may be furnished with copies of certain papers and documents to which you allude, I have only to observe, that no such papers or documents have been transmitted from England—and, therefore, I have thought it altogether unnecessary to submit your letter to the lord lieutenant's consideration.—I have the honour to be, sir, your obedient servant,

EVAN NEPEAN.”

“ Mr. Justice Johnson.”

This answer was laid before counsel, who upon the latter part of the note, were of opinion, either that no such instrument as that called a warrant had ever been in existence, and that Mr. Marsden had made use of such an intimation merely to induce Mr. Justice Johnson to give bail, or that if any such instrument had been really transmitted, administration had been wisely advised not to make use of it, and had consequently de-

termined to suppress it. No conception was entertained that any attempt had, or could have been made, “ to palter in a double sense.”

All idea, Mr. Justice Johnson said, was from this time given up by him and by his counsel, that any attempt would be made to carry any such warrant into execution in Ireland ; and accordingly he gave neither himself nor his counsel any farther trouble about the matter. He wrote the following letter to sir Evan Nepean :

“ Sir ;—I had the honour of receiving your letter of the 21st. I put you to this second trouble only to request you will be so good as to excuse me for having taken up your time with my first application, in consequence of a mistake which I perceive I had fallen into. Mr. Secretary Marsden's notes having been sent in answer to my application to my lord lieutenant for leave of absence, though I knew them to be so far private as not to contain official forms, yet I had not then the least doubt they conveyed to me his excellency's pleasure. I thought I had obtained his excellency's leave of absence, but coupled with certain conditions, which, if performed, it was stated in Mr. Marsden's note, it would ‘ not be considered necessary to put in force, in Ireland, the warrant of the chief justice in England, under which,’ it was alleged, ‘ Mr. Justice Johnson might be sent to England.’ As the note mentioned my going to England in the course of a month, I did not think it necessary to return an immediate answer, more particularly as the state of the weather and of my health precluded me from taking advantage of what I then conceived to be his excellency's permission. In two days after (13th Dec.) Mr. Secretary Marsden again wrote, that ‘ he was desirous to learn’ (I presumed by his excellency) ‘ whether it was my intention to go to England ; for should that not be the case, or should I decline to send an answer, such proceedings will be taken under the warrant for my apprehension, as may be directed.’ It was the intimation conveyed to me by these notes which led me to solicit for a copy of any instruments under which proceedings were threatened to be taken against me here in the hands of the Irish government. I am sure, sir, your good-nature will induce you to pardon the trouble I have given you, occasioned by these communications.—I am, sir, your humble servant,

“ 26th Dec., 1804. ROBERT JOHNSON.”

“ Sir Evan Nepean.”

Mr. Justice Johnson said, he then received the following Letter from the Lord Chancellor :



"Ardrinn, December 31st, 1804."

"Sir;—Sir Evan Nepean has sent me, by his excellency's direction, a copy of a letter which he received from you, dated the 26th instant, and informs me, that he had received his excellency's commands to acquaint me, that his excellency had no objection to granting you leave to go to England, if no objection should occur to me. As I understand that your health requires an immediate journey to Bath,\* and the public service does not appear to me to make your remaining in Ireland necessary, I can have no objection; and I am therefore to signify to you, by his excellency's command, that you have his excellency's permission to go to England as soon as you think fit.

"I have the honour to be, sir,

"Your most humble servant,

"REDESDALE."

"The Hon. Mr. Justice Johnson."

Mr. Justice Johnson said, that about the 15th or 16th of January following however, he received an intimation (which had been transmitted by Mr. Marsden to a friend of Mr. Justice Johnson) that if he did not sign a paper, not only equivalent to giving bail, but also undertaking to plead and go to trial in England, in the term following (which began in a week), an arrest of his person must take place.

[The communication alluded to was as follows:]

"Dublin Castle, 14th Jan., 1805.

"Dear sir;—I send you a copy of a letter which I have received from Mr. White, the solicitor to the Treasury in England, and which contains what it is material should be communicated to Mr. Justice Johnson. I cannot do better than put it into your hands for the purpose; and I request you will favour me with Mr. Justice Johnson's determination thereupon with as little delay as possible.

"I am, dear sir,

"Your most faithful, humble servant,

"A. MARSDEN."

"To ———."

"(Copy).

"The KING v. JOHNSON.

"Sir;—I have the honour of your letter of the 6th instant, which I have shown to Mr. Attorney-General, who directs me to say, that Mr. Justice Johnson should be immediately applied to, and it should be notified to him, that an indictment has been preferred against him in the court

\* "Mr. Justice Johnson, in his letters to sir Evan Nepean, of the 17th and 26th of December, mentions the state of his health, as precluding him from going immediately to Bath."—Orig. Ed.

of King's-bench, and found by the grand jury for Middlesex; that a warrant for his apprehension is in Ireland; that it is much to be wished that the necessity of executing that warrant should be superseded, especially under the impression that bail could not be regularly taken upon it in Ireland; that as the object of the warrant is only to ensure an appearance and plea to the indictment, and an appearance on the postea if convicted, if Mr. Johnson will give an assurance (which to obviate all mistake should be in writing), that he will forthwith cause an appearance to be entered, and within the first eight days of the next term a plea to be put in; and that he will appear in the King's-bench on the return of the postea in case he should be convicted, the attorney-general thinks he will be justified in recommending and consenting that the unpleasant extremity of executing the warrant should not be resorted to; but if he should refuse to give such assurance, the attorney-general is of opinion that, however unpleasant it may be, the warrant, after having been endorsed by some justice of the peace for the county or place where Mr. Johnson is, must be executed, and the consequences, however painful, will be such as the law will impose, and which Mr. Justice Johnson's refusal to appear and plead voluntarily will disable the attorney-general from preventing.

"I am, sir,

"JOSEPH WHITE."

"No. 6, Lincoln's-Inn,

"9th Jan. 1805."

To this Mr. Justice Johnson said he answered, that his counsel had gone out of town during the vacation; that they were not returned, but being daily expected, the letter of Mr. White should, at the earliest opportunity, be laid before them, and an answer in conformity to their opinion should be immediately returned. On the 17th, however, at a late hour in the evening, two peace officers made their appearance at Mr. Justice Johnson's house, who being admitted, said they came to require Mr. Johnson immediately to sign a paper which they produced, or otherwise that their orders were to arrest him. They said, they came from the attorney-general. Mr. Justice Johnson conceiving that the answer which he had sent the day before had not been laid before the attorney-general, reduced it to writing, and requested of the officers, that they would lay it before the attorney-general. They accordingly went away to do so, Mr. Justice Johnson engaging to remain where he was until their return. The next morning they returned, with peremptory orders to execute the warrant, if the condition before-mentioned should not be instantly complied with. Mr. Justice Johnson said, that finding the



paper was to bind him to appear in Westminster-hall, and to go to trial in so short a space of time, that any attempt to prepare or defend himself would be in vain, and that he had been by the letter of sir Evan Nepean lulled into a deceitful security, he declined (an opportunity even of advising with his counsel being refused to him) to sign the paper. Accordingly, the arrest was completed. A copy of the warrant was then demanded by Mr. Justice Johnson's attorney, for the purpose of suing out a Writ of Habeas Corpus. The copy was at first refused, but afterwards granted; and Mr. Emerson, the attorney, having taken it, was despatched for the writ. The officers were then asked what were their farther orders? They answered, that they must bring Mr. Justice Johnson to Dublin (his house is about two miles distance from Dublin); but, that there he might remain at any house he thought proper. They were asked, if they had any objection to his remaining at the house of Mr. William Johnson, in Harcourt-street? They assented directly. Accordingly, Mr. Justice Johnson said, he drove thither followed by the officers. On his arrival there, it occurred to Mr. Scriven, who had accompanied him, that the attorney-general could not have any reasonable objection to Mr. Justice Johnson returning to his own house for the night, as the writ would be immediately obtained (the chief justice then, in consequence of a previous intimation having been sent, remaining at home for the purpose of allowing it), and that he would himself go and ask the attorney-general. One of the officers said, that as the attorney-general was waiting for him to know the event, he must go, and that he would himself mention the request to the attorney-general, who, he made no doubt, would comply. The officer went, and did not return with an answer until the day was nearly elapsed. He then informed Mr. Justice Johnson, that as to his returning to his own house for that night, the attorney-general would not interfere;\* and therefore he, the officer, could not permit it. Mr. Justice Johnson said, he replied, he was sorry for it, but would endeavour to accommodate himself for the night where he was. The officer, after a little pause, observed, he was sorry he could not permit even that, as his orders were that Mr. Justice Johnson must sail forthwith

\* "It is a debt due to candour to state the answer which was given by Mr. Attorney-general to this complaint of severity made by Judge Johnson. Mr. Attorney said, that as the act under which the arrest was made, enacted, that the prisoner should be carried "by the most direct way," he considered, that any delay in the transmission (even for one night, and in the prisoner's own house, and at his own earnest desire) would enable him to maintain an action for false imprisonment; and, therefore, the desire of Judge Johnson was not complied with."—*Orig. Ed.*

for England—and then turned to the constable who was to accompany his prisoner in the voyage, and gave him some directions. Thus, Mr. Justice Johnson said, that after an illness which had confined him nearly four months, suffering under an almost total deprivation of the use of his limbs on one side, and requiring constant assistance, he had been, under a pretence of being taken no farther than Dublin, led away from his own house, without having given the slightest intimation to his family of the cause of his departure—without having left any provision for the support of his house during his absence—without having prepared any money for his own expences—and he was even without being permitted to return, or to remain a sufficient time to procure a change of clothing, or friend to accompany him, or a servant to attend him, in this helpless situation, to be shipped on board in most severe and tempestuous weather, and accompanied by a constable, on his landing on the other side, to be sent from magistrate to magistrate, by "the most direct road" to London; and this attempt was made at the moment when his attorney was actually employed at the proper office preparing a writ of Habeas Corpus, and the chief justice remaining at home, by appointment, to allow it.

In this difficulty, he said, he sent privately to his coachman directions to bring the carriage to the door, and that he should, as soon as his master got in, without waiting for farther orders, drive directly to the lord chief justice. He then applied to the constable, and told him it was necessary, before they went on board, to call at a house in town, in order to leave some directions, and asked the constable to accompany him in the carriage. The constable having assented, they got into the carriage, and were immediately driven, without the privity of the constable, to the house of the lord chief justice, where Mr. Justice Johnson immediately got out, and threw himself upon his lordship's protection, who accordingly kept him, until the writ of Habeas Corpus was procured, sealed, and allowed.

These circumstances, which Mr. Justice Johnson said were not concluded until a late hour yesterday evening, together with the deceitful security into which he had, by sir Evan Nepean's letter, been lulled, would, he hoped, account sufficiently for his counsel being unprepared for an immediate argument.

The judges having permitted him to state so far, he said, he hoped they would indulge him for a few minutes, in stating publicly his reasons for his resistance, and for declining to meet at once the trial which was offered to him.

Mr. Justice Johnson then read the following reasons:

Because every contrivance has been made use of to obtain a trial in form, and to exclude a trial of the merits.



The proceeding by information is avoided, and that of indictment chosen, because a rule for an information could not be obtained without an affidavit of the falsehood of the charges published, which the prosecutors would not do, because they could not do so with safety.

The particular place is chosen, and the trial transferred to it, because an acquittal there will, in a pecuniary view, be a more severe punishment, from the enormous expense (if witnesses could be had at any expense), of defending, than any fine would probably amount to even if the indictment were submitted to.

Because no expense whatsoever can give the defendant any certainty of having any witness to attend, inasmuch as the prosecutor has purposely chosen a place for trial where the defendant cannot have compulsory process for the attendance of any witness, although a law has been passed for the purpose of bringing him thither.

Because the present is a case, of all others, where such a circumstance will produce the highest degree of oppression; inasmuch as the charge is attempted to be supported on evidence of similitude of hand-writing, of papers in the possession of the prosecutor himself, and of which the defendant can have no knowledge until the moment of trial, in a place beyond sea, and where there is perhaps not one person resident acquainted with his hand-writing; and even if he had, in such a case, a trial where his hand-writing was known, as such evidence is matter of belief and conjecture merely, his method must be, to summon as many persons into court as he could get to attend, who were acquainted with his hand-writing, in order, upon the view at the time, to be enabled to have those who could form a belief or opinion upon the fact—it being notorious, that there are many people who have seen a hand-writing, yet, upon a particular writing, which they had not seen before being produced, have not been able to form such a belief as the law requires.

Because it is notorious that the prosecutors have procured witnesses (most probably at the public expense, and without compulsory process), to go from Dublin (all residents there) to London, to give evidence there; and that the fact, as against the defendant, must be testified by them.

Because it is notorious, that all the above is *contrivance* to elude a fair trial, and not *necessary* to the attainment of justice; inasmuch as it is notorious, that the publication, which is the only fact arising in London, arose as much in Dublin—the paper having been sold,

and being daily now selling in the shops in Dublin; which fact is as much a publication as the publication in London, and could equally be given in evidence on a trial against the supposed writer.

Because, by a trial in London, if the defendant should be convicted, he would be deprived of the full benefit of giving the truth of the facts, and other circumstances, in evidence, in mitigation of his sentence—the Court, in such last-mentioned case, determining as a jury, upon the credit they give to the witnesses, from knowledge of their character, and from knowledge of the defendant's himself, and from their own knowledge of facts which they may happen to have.

Because, even if the case were doubtful, the liberty of the subject should be preserved:—though the defendant does not apprehend it to be doubtful; because, in order to remand the defendant, the Court must determine, that in a case against a supposed writer of a libel, when he was at the time of the alleged writing and publication in Dublin and not elsewhere, and when the papers appeared to have been written in Dublin, and where the witnesses to prove the writing on the one side, and to disprove it on the other, are all residents in Dublin, and where the publication was in Dublin (as well as in London and elsewhere), and where all the facts happened previous to the passing of the act, the legislature had it in their contemplation, that such a case should be sent for trial to London, a place nearly 400 miles distance from Dublin, beyond the seas, beyond the jurisdiction of the code of laws within which the above facts happened, and to a place where no process can compel the attendance of a single witness resident in Dublin aforesaid; an intention so monstrous, that it never can be enforced, while the act, by any possibility, can admit of any other construction.

The argument then commenced by the counsel for Mr. Justice Johnson.

The attorney-general replied on Tuesday the 22nd.

A difference of opinion subsisting among the judges,\* the matter was adjourned into the Court of King's-bench.

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\* It was reported that the division was as follows: there were eight judges assembled:—Three were of opinion that Mr. Justice Johnson should be remanded; three that he should be discharged; two declined to give any opinion.—*Orig. Ed.*



*Proceedings before the Court of King's Bench in Ireland, in the Case of the Hon. Mr. Justice Johnson.*

COURT OF KING'S BENCH, DUBLIN.

SATURDAY, JANUARY, 26, 1805.

*The King, against the hon. Robert Johnson.*

The writ of Habeas Corpus and the return were read; as were also the following

AFFIDAVITS.

*The King,* } Robert Johnson,  
v. } fourth justice of his  
*The Hon. Robert Johnson* } majesty's Court of  
Common Pleas in Ireland, maketh oath and saith, that he hath lately seen a writing, signed Edward Medlicott, purporting to be a return to a writ of Habeas Corpus issued in this cause, on behalf of deponent—in which is set forth a writing, stated by the said Edward Medlicott, in his said return, to be the copy of a warrant from the right hon. lord Ellenborough, lord chief justice of England, &c.—in which copy, as set forth in said return, it is set forth, that it was certified to the said lord Ellenborough, by one of the clerks of the Crown-office, that the hon. Robert Johnson, late of Westminster, in the county of Middlesex, esq., one of the judges of the Court of Common Pleas, in Ireland, stands indicted in his majesty's court of King's-bench at Westminster, for certain misdemeanors, in composing, writing, publishing, and printing, at Westminster aforesaid, certain scandalous and malicious libels, of and concerning his majesty's government of Ireland; the right hon. Philip Earl of Hardwicke, his majesty's lieutenant-general, and general-governor of Ireland; the right hon. John Lord Redesdale, his majesty's lord chancellor, and keeper of the great seal, and one of his privy council of Ireland; and the hon. Charles Osborne, one of the justices assigned to hold pleas, before the king himself, in Ireland:—This deponent saith he hath heard and believes, that the indictment in the said paper mentioned, has been found upon the prosecution of persons employed or concerned in the administration of his majesty's government in Ireland, and upon the information of three persons, who are all, as deponent believes, attornies of one or more of the law courts in Dublin, and were sent, as deponent has heard and believes, from the city of Dublin to the city of London; deponent saith, that the papers with which deponent stands charged as the writer and publisher, and referred to by said writing, called in said return the warrant of the said lord Ellenborough, were first published in the city of London, as deponent has heard and believes, between the latter end of the month of October, in the year one thousand eight hundred and three, and the commencement of January, one thousand eight hundred and four, and ap-

pear to bear date within that period, and relate principally to transactions which occurred in Ireland, in or about the twenty-third of July, one thousand eight hundred and three, and immediately subsequent thereto; and this deponent positively saith, that he never has been out of this part of the United Kingdom, but has constantly resided therein since the latter end of October, one thousand eight hundred and two, being one year before the commencement of said publication, and also a considerable time before the transactions concerning which they appear, as deponent believes, to have been written. This deponent saith, that any evidence which this deponent could procure, relative to this deponent's hand-writing, conduct, or character, do arise in the city of Dublin, and not elsewhere; and deponent saith, that he hath no means whereby he could be certain of or compel the attendance of witnesses in the city of London, necessary for his defence.

*Sworn before, me this 21st day*

ROBERT JOHNSON. *of January, 1805.*

EMERSON, Attorney. W. DOWNES.

*The King,* } John Swift Emer-  
v. } son, of the city of  
*The Hon. Robert Johnson.* } Dublin, attorney,  
maketh oath and saith, that he hath lately seen a writing, signed Edward Medlicott, purporting to be a return to a writ of Habeas Corpus, issued in this cause, on behalf of the defendant—in which is set forth a writing, stated by the said Edward Medlicott, in his said return, to be the copy of a warrant from the right hon. lord Ellenborough, lord chief justice of England; in which copy, as set forth in said return, it is set forth, that it was certified to the said lord Ellenborough, by one of the clerks of the Crown-office, that the hon. Robert Johnson, late of Westminster, in the county of Middlesex, esq. one of the judges of the court of Common Pleas in Ireland, stands indicted in his majesty's court of King's-bench, at Westminster, for certain misdemeanors, in composing, writing, publishing, and printing, at Westminster aforesaid, certain scandalous and malicious libels of and concerning his majesty's government of Ireland; the right hon. Philip Earl of Hardwicke, his majesty's lieutenant-general and general-governor of Ireland; the right hon. John Lord Redesdale, his majesty's lord chancellor, and keeper of the great seal, and one of his privy council of Ireland; and the hon. Charles Osborne, one of the justices assigned to hold pleas before the king himself in Ireland. This deponent saith, he hath heard and believes, that the papers with which the defendant stands charged as the writer and publisher, and referred to by said writing, called in said return



the warrant of the said lord Ellenborough, were first published in the city of London, in a series of four letters, signed "Juverna;" the first letter bearing date on the tenth day of October, one thousand eight hundred and three, and the fourth letter bearing date on the twenty-eighth day of November, one thousand eight hundred and three, in a periodical publication called Cobbett's Register, as this deponent believes; and this deponent saith, that the said letters are now and have been for a considerable time past publicly exhibited for sale in the principal booksellers shops in the city of Dublin: (this deponent having purchased a volume containing the said series of letters, signed "Juverna," at a bookseller's shop in the city of Dublin,) where the same was publicly exhibited for sale; and this deponent saith, he hath frequently seen advertisements in the Dublin newspapers, announcing the publication of Cobbett's Register, which contained the said letters, and the sale thereof in the city of Dublin.

*Sworn before me this 22d day*

J. S. EMERSON.

*of January, 1805.*

W. DOWNES.

*Counsel for the Prosecution.*

Arthur Brown, esq. Prime Sergeant.

The Right Hon. Standish O'Grady, Attorney General [afterwards Lord Chief Baron of the Exchequer].

*Agent.*

Mr. T. Kemmis.

*Counsel for the Defendant.*

Mr. Curran [afterwards Master of the Rolls].

Mr. Macartney.

Mr. Burrowes.

Mr. Ball.

Mr. William Johnson [afterwards a Judge of the Common Pleas].

Mr. Scriven.

Mr. Bell.

*Agent.*

Mr. J. S. Emerson.

Mr. Macartney.—I have to move your lordships that the defendant may be discharged, on the ground that his arrest is illegal.

The offence with which he stands charged, is merely a misdemeanor, and the arrest is attempted to be justified, under the statute 44th of the king. That act received the royal assent on July 20th, 1804, and before I go into the act, the defendant is entitled to be discharged; or *ex debito justitiæ*, the offence is bailable.

Mr. Justice Day.—Will it not content you, that the attorney-general consents to bail?

Mr. Macartney.—I wish the Court not to misunderstand me. It is no part of my *application* that he should be bailed, though I make it part of my *argument*. The position was stated to your lordship, but was controverted by the attorney-general; and the gentleman who urged it, not expecting such an opposition, was not prepared with authority.

Mr. Justice Day.—The attorney-general's position was this, that a man standing indicted for an offence, and not appearing, was not bailable by an inferior officer.

Lord Chief Justice Downes.—I do not think this point very material.

Mr. Macartney.—As this is a very great constitutional question, I wish to argue it in every point of view, in which I can. I refer to Wilkes's case,\* which operated as much upon the public mind as any. He was charged with a libel of as serious a nature as the present, and was committed upon a warrant by two secretaries of state. He applied for a Habeas Corpus, which was granted by chief justice Pratt, whose opinion I shall state in his own words. It had been insisted, that a libel was a breach of the peace: He expressly lays it down that a libel is not a breach of the peace; he says, "it tends to a breach of the peace, and that is the utmost," and cited, 1 Lev. 139. "But," says his lordship, "that which only tends to the breach of the peace, cannot be a breach of the peace;" and, then he goes on to lay down the doctrine which I insist upon. He expressly says, that a libeller is not bound to find sureties of the peace, and that he could not find in any book a case where a libeller was bound to find sureties of the peace, excepting the case of the Seven Bishops; that three of the judges held that bail should be required, but that Powell, the only honest man of the four, dissented from the opinion of his brethren, and he was of opinion with him, that the case of the Seven Bishops was not law; that it was absurd to require bail in the case of a libel, and therefore Wilkes was discharged.

Lord Chief Justice Downes.—Wilkes was discharged upon the ground of having privilege; and as to the last expressions, that it was absurd to require bail in the case of libel, if you advert to the former part of his opinion, you will see that he must be misreported. In another report, these words are not stated.† In the former part, he says, that though a libel is not a breach of the peace, yet it is a great misdemeanor, and requires bail, according to circumstances.

Mr. Macartney.—It was part of the argument of Wilkes's counsel, that he was entitled to be discharged, as having privilege of parliament, and I have accurately stated the words reported.

One of the highest authorities, lord Hale, 2 P. C. 127, lays it down, that regularly in all offences, either against the common law or acts of parliament, that are below felony, the

\* 2. Wils. 150, 19 Howell's State Trials, 981.

† This variance in the two reports of lord chief justice Pratt's argument has been recently the subject of some discussion in the case of Butt v. sir Nathaniel Conant in the Common Pleas, Hil. Term, 1. Geo. 4th, Feb. 8th, 1820, not yet (June 1820) reported.



offender is bailable, unless he hath had judgment, or by some special act of parliament, bail is ousted.

The same doctrine is expressly holden, in Marriot's case, 1 Salk, 104. He was charged with as high an offence, short of felony, as well can be imagined; with forging the endorsement of an exchequer bill, which is a part of the public securities, and which should be protected by every magistrate.

The return in the present case is attempted to be justified by statute 44th Geo. 3rd. I contend that this case does not come within the statute; and what I have already said, tends to fortify the arguments which I shall use to show that it does not. That statute has various objects in view, and whether you consider it, on reading its title, or its preamble in the third or fourth sections (wherein, or in two of them at least, it recites the mischief meant to be remedied), or the enacting part of it, you will be of opinion, that this case does not come within it.

It is entitled, "An Act to render more easy the apprehending and bringing to trial, offenders escaping," &c. &c. The preamble in the first section is, "that persons against whom warrants are granted escape, &c." The object, beyond all controversy, was, to bring offenders to justice, who *escaped*. Whether they resided or not in the place where they are arrested, is another consideration: but I rely, and shall urge it upon every clause, that the object was to bring offenders to justice, who *shall have escaped*.

The first section relates to this island merely, and is calculated to enable the magistracy of the country to follow offenders from the counties, where they had committed offences, into those where they should be found; and if the offence were capital, to transmit from thence to the county where they were to be tried; and if bailable, to bail upon the spot, *if one of the minora crimina*, and it is carefully guarded in this part, that a person charged with a lower degree of crime, should not be treated as a *felon*.

Mr. Justice *Daly*.—Your argument is, that there *must* be an *escape*?

Mr. *Macartney*.—I rely upon that; and through every section, it appears to have been the intention of the legislature.

Mr. Justice *Daly*.—Suppose it were accessorial felony, by procuring a murder in England, without leaving Ireland?

Mr. *W. Johnson*.—He could not be tried at all, as the law stands.

Mr. Justice *Day*.—There is an act of parliament as I apprehend, which regulates that. The judgment in one country may be used in the other, though the accessorial party could not be tried, but in Ireland.

Mr. *W. Johnson*.—Not even there, as I shall show.

Mr. *Macartney*.—I admit, that the first section is intended to reach offenders of every description within this island. It authorizes,

that a felon may be pursued from the county where he committed the crime, to the county where he is found, and may be transmitted for trial; it embraces every crime, the greater and the lesser; it empowers the magistrate to pursue any offender, high or low, to any part of the island, and it is carefully guarded that nothing more shall be done than is essential to the public peace—that he who may be guilty of an assault shall not be punished as a felon; and through every stage of the fifth section, the liberty of the subject is protected. The endorsing magistrate, *i. e.* the magistrate of the county where the culprit is found, is enabled, upon affidavit that the warrant produced is the warrant of the magistrate whose name is signed to it, to endorse the warrant and thus legalize the arrest. If the offence be bailable, bail is to be taken, and a recognizance, which is to be transmitted together with the affidavit or confession, &c. to the proper county; and in case of forfeiture, the recognizance shall be recovered, &c.

In this case, it is remarkable that no such affidavit is made.

Mr. Justice *Day*.—Then the magistrate endorses it at his peril.

Mr. *Macartney*.—He may so; but by the act of parliament he should have an affidavit, that the warrant was actually the warrant of the magistrate who is stated to have issued it.

Mr. Justice *Day*.—Then you argue, that there is no evidence, that this is lord Ellenborough's warrant.

Mr. *Macartney*.—It may be a forgery, and it does not purport to be issued by the chief justice of England; it is signed, "Ellenborough," but it does not state where he is. If it were signed by Medlicott, it would have been signed by him *as a justice of the county*; and this warrant ought to state, by "*Ellenborough, Lord Chief Justice of England*"—if it be his warrant.

The third section relates to persons who shall have escaped from Ireland to Great Britain—[the learned counsel here stated the section], the date is material, because I argue that the act is prospective—not retrospective; and if you shall be of opinion, that this section warrants the transmission of an offender for one of the inferior order of crimes, committed in Ireland, to be arrested by a magistrate in England, and transmitted to Ireland for trial, you must decide that by a side wind, and not by express words, the English Habeas Corpus act of Car. 2 is *ipso facto pro tanto* repealed. I need not observe how much the English nation, and all writers upon its laws, pride and plume themselves upon the security which this famous statute has given to the people of England.

The sentiments of Mr. Justice Blackstone (3 Comm. 135) are more emphatical than any thing I can convey to the Court. After having enumerated the various Habeas Corpus laws, and the acts of parliament made



in England, to preserve the liberty of the subject from the encroachment of the crown, he refers to a case which drew great public attention—Jenkes's case, who was committed by the king and council for a turbulent speech at Guildhall; he says, "new shifts and devices were made use of to prevent his enlargement by law"—"The oppression of an obscure individual gave birth to the famous Habeas Corpus act, 31 Car. 2, c. 2, which is frequently considered as another Magna Charta of the kingdom." He then goes on through the provisions of that statute—it is not necessary for me to mention more than that the isles of Jersey and Guernsey are brought within it, which were not before, and it contains these very remarkable words, "that no *inhabitant* of England" (and the case I put was that of an *inhabitant*), "shall be sent prisoner to Scotland, Ireland, &c. on pain, that the party committing shall forfeit 500*l.* with treble costs, shall be disabled to bear any office of trust or profit, shall incur the penalties of *præmunire*, and shall be incapable of the king's pardon."

I can conceive no penalty more severe than this, which is inflicted by this second Magna Charta for a violation of the liberty of the subject. But if you construe the 44th, Geo. 3rd, so extensively as that a man *found* in England an *inhabitant* there, may be transmitted to Ireland, you repeal that act.

Mr. Justice *Daly*.—Then the only question is, how far the act of the 44th of the king goes—for so far it repeals the former.

Mr. *Macartney*.—I contend it meant to go no farther than the exceptions in the former statute, treason and felony. If a man committed treason in Ireland after the passing of that act, he might be taken up, though he had gone to reside in England, and he might be sent into Ireland;—treason and felony are the only exceptions in the act, and even with regard to this exception, in a case of the highest degree of criminality, it was a doubt in England whether a man, who had committed an offence of that nature could be transmitted—2 Ventr. 314, Lundy's case—Colonel Lundy stood charged with having been appointed governor of Londonderry, and intending to betray the city to James. He fled into Scotland, where he was apprehended and transmitted to London; the question was, whether he could be transmitted to Ireland for trial, and upon a meeting of the judges (which shows how great the doubt was) they were of opinion that he could be transmitted, because he was within the exception.

Mr. Justice *Daly*.—The question was, whether he could be tried by martial law, because after the act, he could have been transmitted, being charged with a capital offence.

Mr. Justice *Daly*.—I wish to understand another argument—you say that the act 44 Geo. 3rd did not extend to any case except those which were excepted in the Habeas Corpus act.

Mr. *Macartney*.—The first section extends to all cases, but the third section extends only to capital offences.

Mr. Justice *Daly*.—What then did it do with regard to England?

Mr. *Macartney*.—The same thing which was done with regard to Ireland.

Mr. Justice *Daly*.—Then you might draw your pen across the fourth section.

Mr. *Macartney*.—No such thing—I shall come to that presently. A case (while my lord Hale was chief justice of the King's-bench) was cited in colonel Lundy's case, of a man who had committed murder in Barbadoes, was taken in England, and was sent over to be tried at Barbadoes; BUT IT WAS BEFORE THE HABEAS CORPUS ACT.

But upon the question of transmittal, a case was cited at your lordship's house, Kimberley's case, 2 Stra. 848. He had committed a capital offence in Cork, and was taken in England, and a question arose, whether he could be transmitted; and being brought before the judges, it was held he could, being within the exception, and he was transmitted and executed.

Then I come to the case of a person *escaping* from England into Ireland. The words of the act are, "for remedy of the like inconvenience by the *escape* into Ireland of persons *guilty* of crimes" (still retaining the emphatical word *escape*—but *guilty* is a strange word, because my idea was, that a man accused was considered as innocent till convicted); "be it enacted, that after 1st of August, 1804" (still prospective), &c. (states the clause).

It is under this fourth section, that the present arrest is to be justified. I contend, that it relates only to the higher order of crimes, and does not embrace the lower order,—that it is prospective, and relates only to crimes to be committed thereafter.

Mr. Justice *Daly*.—It seems as if it did not relate to *crimes*, but only to the mode of proceeding against *the criminal*.

Mr. *Macartney*.—So it was argued by the attorney-general. But I contend, that it can only apply to persons, who committed offences in England and escaped into Ireland; and from that ground I cannot be removed.

In the construction of this act, which never has been construed, and is doubtful, because the judges of the land have differed in opinion upon it, it is out of the power of human wisdom to give a different interpretation to the third and fourth sections. If you shall be of opinion, that a man charged with an offence in Great Britain, though not *escaping* from it, but because he happens to *be* or *reside* in Ireland may be transmitted to England—it is utterly impossible, but that the decision must be the same way upon the other section, and that a person residing or being in England or Scotland, may be transmitted here into Ireland for trial.

My argument is, that the statute embraces only the higher order of crimes and is pros-



pective:—unless both points are ruled against me, the defendant must be discharged. If the statute be retrospective, to what period may it not be extended? and it follows that in the case a man who had committed a trivial offence in England twenty or thirty years ago, there is nothing to prevent a bill of indictment being found in the most insignificant court there, and a warrant issued to take him here.

You are gravely told of the high nature of this warrant, that the chief justice who had gone the northern circuit was acquainted with the law relative to Scotland, and would not lightly put his name to such a warrant.

Lord Chief Justice *Downes*.—It was not pretended to have effect as his warrant in this country; it is just such a warrant as he would grant for any offence committed in England, and therefore I own I was somewhat surprised, that the first affidavit should say that the warrant was illegal; because it only required that the party should be brought before the chief justice, if taken in Westminster or Middlesex; and if elsewhere, before any justice of the peace of the county. But I take for granted, the meaning of the objection is, that the *arrest* is illegal.

Mr. *Macartney*.—My argument is, that a man who may have committed a trivial offence thirty years ago, may be taken in Ireland, carried out of the country without bail or mainprize, and tried among strangers for an offence that should have been forgotten.

Having put an English case, I shall put a Scotch one. I do not know, whether you ever heard of the Scotch law called home-seeking [N. B. the learned counsel pronounced it home-sucking]. The laws of Scotland are very different from the laws of England; for the offence of seditious libel, which is only a misdemeanor in England or Ireland, a man is punished by fine, imprisonment, and sometimes with pillory. But in Scotland it is a transportable offence. Muir, a Scotch advocate, and others have been so punished. I have procured “*Erskine upon the Principles of the Law of Scotland*,” a book as much esteemed there, as Blackstone here. The offence of home-seeking is merely the assaulting a person in his own house, but it is a capital felony. *Erskine*, 506. The law is described in the *Encyclopædia*, and some mention is made of it in Blackstone, but no authority is referred to. Blackstone says, it is synonymous with burglary, which shows, that though he was a learned man, he was ignorant of the Scotch law.

Mr. Justice *Day*.—The term is home-sacking, which means sacking a man's house.\*

\* Lest the reader should be misled by the expressions in the text, I have extracted from Mr. Hume's Commentaries on the Law of Scotland, respecting the Description and Punishment of crimes, the following definition of the offence alluded to:

Mr. *Macartney*.—So Blackstone confounds it. Suppose another case—suppose an Irish ensign serving in Scotland, receives what he conceives a grievous insult, which he should resent; satisfaction is refused, and he writes to a friend in Ireland, to know what he is to do. The term “art and part,” is the same as accessorial in our law. The friend in Ireland writes to the ensign to flog his adversary wherever he finds him, and, following that advice, the ensign goes to the house and assaults his adversary. He is subject to the punishment of home-sacking—he is taken up and searched, the letter is found, the writer is accused as a promoter of the crime; a warrant is issued by a Scotch magistrate, it is transmitted to Ireland, endorsed by an Irish magistrate, and the man who thought he did nothing but give advice to a friend, for the vindication of his honour, is carried off to Scotland, and tried for the crime of home-sacking!

I contend that this is an *ex post facto* law, and should not be extended. 2 lord Raym. 1352. Part of the ground of my application is the affidavit of the defendant, made upon the second day after the arrest, a copy of

“The only other article in our list of capital offences against the person, is Home-sucken, or the felonious seeking and invasion of a person in his dwelling-place or house. Notice is taken of this crime, and the same description is given of it in the laws of the Visigoths, and in those of Edmund, the Anglo-Saxon king, and of Canute the Dane. It seems, too, to have been known under that name, and as a capital offence, in the law of Utrecht [See *Mathæus de vi publicâ et privatâ*, ch. 4.], and of some other states of modern times. Our oldest memorial concerning it, is in the *Regiam Majestatem* [B. 4, ch. 9, 10], which directs the prosecution of it to be followed out in like manner as that of rape and robbery; as, indeed, in its own nature, it far exceeds the guilt of an ordinary assault, and is a crime of that bold and heinous character, which makes it a fit companion of those high transgressions. For nothing can well be attended with greater terror and alarm, or more break in upon a person's peace, and opinion of security for the future, than the sudden irruption and attack of a ruffian in that place which is most peculiarly a man's own, and which the law has carefully fenced for him, as his sanctuary and surest refuge from all manner of harm. It is true, it may not be so necessary now as in more undisciplined times to punish the transgression in every instance to the utmost extent of what the prosecutor may insist for; yet still the crime retains that rank as a Point of Dittay which ancient custom has assigned it (for it rests on custom only), and in any case of extreme or atrocious injury would be warrantably punished with the highest pains of law.”—2 *Hume on Crimes*, ch. VIII, p. 20.



which was delivered to the attorney-general. We had a right to make such affidavit, to explain facts, without controverting the writ or the return. The object of that affidavit was, to show, that for the crime with which the defendant is charged, he had not escaped from one island to the other. He states, that he has seen a writing signed, Medlicott, purporting to be a return to the Habeas Corpus, setting forth the warrant, &c. He is described as late of Westminster, which must be added with a view to show he was resident there. He states that he is charged with certain misdemeanors; that he believes the indictment is found upon the information of three persons, attornies of Dublin who were sent to London [the learned counsel here stated the affidavit].

If the facts stated in this affidavit were not true, the prosecutor might have answered them.

Mr. Justice Day.—Does it appear clearly, that the publications in England were identically the same as those published and purchased in Ireland?

Mr. Macartney.—I apprehend that every publication is a new publication.

Mr. Justice Day.—But does it clearly appear that they are of the same matter?

Mr. Macartney.—It does, by Emerson's affidavit.

Mr. Justice Day.—That is only upon belief.

Mr. Macartney.—But it is not contradicted, and must now be taken as incontrovertibly true.

Mr. Justice Day.—I do not make myself understood; I want to know, whether it is sworn distinctly and positively, not upon hearsay and belief, that the papers purchased here, are the same identical papers upon which the indictment was found?

Mr. Macartney.—It is impossible for a man not acquainted with the secrets of the crown to state that positively.

Mr. Justice Day.—The indictment must set forth the words of the libel.

Mr. Macartney.—Consider where we are. On the moment of the arrest, Mr. Justice Johnson could not send to England. If you let the motion stand over, we will apply for a copy of the indictment.

Mr. Justice Day.—If it were a felony, you could not get a copy. Upon the trial it may be read; but it is doubtful whether they would give you a copy even in misdemeanor.

Mr. Burrowes.—The libel is stated to be upon the Irish government and particular individuals who are named, all resident in Ireland. It appears upon the affidavit that most of the events happened at a certain period, and Emerson swears he bought a publication at a subsequent time in Ireland; which will upon inspection, appear to relate to the Irish government and the same individuals. Therefore it is *prima facie* the same, when the crown refuses to produce the original and show the matter more satisfactorily. Suppose it were taken

for granted, that the fact of going out of the country was essential, the Court would not expect that to be established by evidence which it is impossible to give, but only by that which is in the power of the party, when it can be more satisfactorily shown by the prosecutor.

Mr. Macartney.—Taking the affidavit as true, it was impossible that he could have escaped from England. Because if he was not there since 1802, which he swears he was not, and if the publication related to facts originating in this country in 1803, and subsequent to that period, he could not have been in England when the publication was made, and could not have escaped therefrom. I rely that the intention of this act was, to bring offenders to justice, who, in order to avoid trial in one island, escaped to the other; and the words "reside or be," are to be construed, that the party having a residence in one island, or being in it, and escaping therefrom, comes to reside in the other; and it might be used to avoid a quibble, that though the party be not taken fleeing, he yet shall be taken wherever he shall be found, whether in his residence or not. Such is the plain meaning of the statute, without torturing or forcing the language, and therefore this case is not within it. See the hardships and difficulties, the great inconvenience and heavy oppression, that would attend another construction. A man for a misdemeanor alleged to be committed in England, and who is resident in Donegal, might, upon a bill of indictment found in Cornwall, be transmitted without bail or mainprize, there being no authority to bail him till he touched English ground.

In that part of the statement which relates to the transmittal from one island to another, there is no provision for bail, and no person can take bail, but the person having authority to try; upon that principle is founded the doctrine, that justices of peace cannot take bail, in cases of capital felony; because neither the justice nor the quarter sessions (the court to which he belongs) can try the offence. If this act were extended to a person resident in Ireland, who had not escaped, it would follow, that he must, before he meets an authority to bail him for a misdemeanor, be transmitted to Wales; and how improbable it is, that an unfortunate Irishman would find two householders of that principality to bail him, or even in London two of his countrymen who would appear, or who would be taken as bail. Suppose him a man of inferior degree, the liberty of the meanest peasant is as carefully guarded as that of the man of high rank, you will not, upon a doubtful act, restrain it; 19 Vin. 528, "no statute shall be interpreted so as to be inconvenient and against reason;" it would be highly inconvenient and against reason that a poor man should be sent out of his own country, for a bailable offence; which must happen, if the construction contended for to support this arrest be adopted, because there is no authority here to bail him. The defendant has



sworn, that he cannot by legal process enforce the attendance of any witness, if he shall be transmitted for trial to England; all his witnesses reside here, and he cannot enforce their attendance: to try a man in a country where he cannot procure witnesses is against natural justice; 19 Vin. 528, a statute is not to be so construed as to destroy natural justice, and therefore you will take that line which is plain and clear, that the act of parliament between island and island was only meant by the legislature to embrace the higher crimes, and not to touch upon the lower. The words of an act of parliament, I conceive make but a small part of the consideration of the judges, when they put a construction upon it; Plowden compares the words of the law to the shell of a walnut and the sense to the kernel, which he says is the profit; the shell of this act is *reside or be*, and the kernel is *escape*.

I rely upon the word *escape* as showing the intention of the legislature, in enacting this very remarkable law.

Mr. Justice Day.—You do not mean to confine the word to its limited sense, *flee*, but any manner of migration. Suppose he had committed an offence in England, and there was no design of prosecution, and he returned in the ordinary way to his original habitation, in Ireland, you would not say, that was not such an escape as would come within the act.

Mr. Macartney.—I certainly would not contend against that. Suppose this case; that a colonel of English militia, who gallantly volunteered for this country, to free us from the rebels in 1798, committed a misdemeanor here, and that under the authority of this act a vindictive rebel, whose nose was pulled, prefers a bill of indictment and issues a warrant, which is backed by an English magistrate; the colonel must be taken to Ireland without bail or mainprize, whereby that boast of the English nation, the Habeas Corpus is defeated. Can it be supposed that the legislature meant to extend this law—which passed without debate, comment, or newspaper observation, by 400 or 500 members, which was not taken notice of in the Lords, nor heard of till it arrived here—to minor offences? If it extends to Ireland, it must equally extend to England and Scotland, and a man may be brought from Cornwall to Donegal and from Caithness to Derry upon a trivial charge. The legislature never could have intended so great a breach of the second Magna Charta.

Where extraordinary laws imposing new and severe punishments are called for, it is not upon light occasions that they are enacted; there was an act passed here upon a melancholy occasion, 15 and 16 Geo. 3rd; among other offences it makes an injury done to the habitation (which before was a mere trespass) a capital felony, and there have been many unfortunate victims of that severe but necessary law. See how the judges have interpreted that statute, by its recital, which is, that several persons have in a riotous and disorderly

manner, &c. Men have been indicted for injuring habitations and have been found guilty, but upon their cases being reserved for the judges, they held, that unless it appeared that the country was in that state which the preamble describes, the party was not within the statute; the like benign and humane determination ought to be made in this case. A remarkable case occurred in England, 1 East's P. C. 424. Renwick Williams,\* called the monster, was indicted upon the statute 6 Geo. 1st, for cutting a young lady. That statute was made to prevent the practice of cutting muslin and other clothes; it appeared that her clothes were cut so as to bring him within the statute; he was tried before Mr. Justice Buller, and the defence was, that the intent was not to injure her clothes but her person; Mr. Justice Buller thought he came within the case of Coke (who was indicted upon the Coventry act), and being convicted, the case was reserved for the judges; they held the conviction to be bad, which shows how careful they are to keep the law strictly within the intention of the legislature, and not to extend it one iota beyond the mischief intended to be remedied.

In this case the defendant does not come within the meaning of the statute at all, and I rely that if he has committed the offence with which he is charged, public justice may be attained and punishment inflicted without straining the law; because if he be the writer of the libel in question, it appears by the affidavit of Mr. Emerson, which is uncontradicted, that it was published in this country.

Mr. Justice Daly.—Does it follow, that the publishing a libel in England is the same offence as publishing it here?

Mr. Macartney.—I mean to say that the judges will be astute to prevent offenders escaping justice, and that here no such consequence follows from the construction I contend for. The mere writing a libel is no offence, if the writer keeps it to himself; but if he shows it to others, or sends it to the post-office, or sends it to the man intended to be libelled, that amounts to a publication. Now, Emerson's affidavit is not contradicted; and it appears by it, that the libel has been published in Dublin, and I rely upon this as an argument to induce you to a benign interpretation, because it is not necessary that he should be sent out of the county for a bailable offence.

Mr. Justice Daly.—It strikes me, that any person who publishes a libel both in England and Ireland may be punished in both countries. The conviction in England would be no bar here.

Mr. Macartney.—Then he might be punished in every county where the libel circulated.

Mr. Justice Day.—A conviction in the same island might be pleaded, but not between island and island.

\* S. C. 1 Leach 529, 4th edition.



Mr. *Macartney*.—I contend that a man resident in Ireland, and never out of it, cannot be tried in England, or taken upon this act; and here there is *no occasion* to take him from his own country for a bailable offence, at great inconvenience, to be tried by a jury of strangers, and (what is most material) where no witnesses can be compelled to attend.

The doctrine, that a person who parts with a paper which is considered a libel, is guilty of a publication, is confirmed, by Preston's case, Fost. 196. He was indicted for treason, in embarking at Surrey-stairs, on board a boat, with intention to invite France to invade England. It was objected, that he committed no overt act in Middlesex. But it was held by all the judges, that the embarking at Surrey-stairs in the county of Middlesex, if the jury believed it was with the intention of carrying his traitorous purpose into effect, was an overt act, and that every step was an overt act. So in Hensey's case, 1 Bur. 646, sending letters to the post-office was considered an overt act. So Jackson's \* case tried here. Upon the whole, therefore, I hope you will think, that the act of parliament bears the construction I contend for; and that not residing in England, or escaping therefrom, Mr. Justice Johnson is not within the act, and ought to be discharged.

Mr. *Prime Sergeant*.—In this case I am under the disadvantage of not having heard any of the arguments offered at your lordship's house, except as I have been able to learn them from the counsel, who has just sat down. My argument, therefore, will be confined to such observations, as occur to me or are suggested by him.

It is impossible that an act such as this should not come under discussion at some time or other. I am sorry that this case should be the first; but my duty extends no farther than to consider the abstract question, and to show that the case comes within the statute.

The enacting words are as plain as can be. "If any person against whom a warrant shall issue for any crime or offence shall escape, go into, *reside or be*, it shall be lawful," &c. The statute clearly specifies four cases.

First, The case of a person, who, after a warrant issued, and he being conversant of it, flees, and escapes in the common sense of the word to another place.

Secondly. The legislature then reflected, that a man against whom a warrant issued, might not be conversant of it, nor intending to flee from it, and yet might go into another country, which could not be called an escape, because the intention might not be to flee from justice at the time.

Thirdly. The framers of the act appear, in the next place, to have considered that there are crimes which may be propagated from one country to another, without the person

of the offender moving from his residence. They therefore took in the case of a man who never might be in the country where the offence was committed; and therefore, though never resident there, nor escaping from it, but altogether resident in another country and his domicile there confined, yet if such a man were the author of a crime in England, he should not be free from the hand of justice.

But then there was a fourth case. It was seen, that a man might make this objection, "I never escaped from England, nor ever was in England, and therefore I cannot have come from it, nor am I resident in Ireland, I am only occasionally in Ireland, my domicile is in another place;" to avoid any cavil of that kind, they introduced the word *be*, that if found there, he might be liable to a warrant from England. These are the plain enacting words; the cases are perfectly distinct and marked, and common sense shows that such must have been the intention of the legislature; because common sense must tell us, that where a man is capable of committing a crime in another country, though never there, as sending poison to kill another, or sending traitorous papers to encourage sedition—

Mr. Justice *Day*.—It strikes me, that argument may be turned against you. Because there the man conveying the poison, would be a perpetrator of the crime; he would be a principal.

Mr. *Prime Sergeant*.—I suppose the case of a man sending, not conveying. The person sending is the criminal, the other may know nothing of the poison.

In opposition to those plain enacting words, I find no objection made, or indeed that occurs, but the preamble, which only mentions the word *escape*; but the conclusion urged does not apply. The argument supposes that the preamble controls the enacting part. It is an excellent key to the meaning of a statute, and so far is a subject of argument; but it can only be a key, where the meaning is doubtful; if the words are plain and direct, so that no doubt can arise, it is useless to recur to the preamble, which is only called in aid where the enacting part is obscure. This doctrine is recognised by lord Hardwicke, in *Basset v. Basset*, 3 Atk. 203. The case arose upon the statute 10 & 11 W. 3, c. 16, extending the benefit of remainder to posthumous children; and though a civil case, the principle of construction is the same. The question was, whether a posthumous child was entitled to the intermediate profits; lord Hardwicke said, that it was impossible the preamble should control the enacting part where it was plain. If this word "escape" be taken in so very limited a sense, the consequence is, it must exclude not only the words "reside or be," but "going into." So that if a person against whom a warrant issued could prove that he did not flee though he went into another country, he could not be arrested.

Mr. Justice *Day*.—If there were nothing

\* *Ante*, vol. 25 p. 783.



more in the case than the preamble, and the enacting part were a mere echo of it, there could be no doubt upon the subject. But any man who said that the preamble should control, or that the enacting part might not go farther than the preamble, egregiously mistakes the law. Yet if it be possible to reconcile them, it is our duty to do so. What say you to this construction, that any person against whom a warrant issues for an offence against law, and who shall escape from England, go into, reside, that is, and reside—meaning that all those shall unite, that the case is of a man committing an offence in England escaping, going into and residing in Ireland,—shall be arrested, &c. Because you see escaping from England would not be enough, if he were not in Ireland, so that they must unite to bring him within the act of parliament; that makes the enacting part commensurate with the preamble, which is pretty explicit and is frequently insisted upon in the statute, “whereby their offences often remain unpunished.” The object is disclosed by the preamble, and is the case of a person committing an offence in one island and migrating to another.

Mr. *Prime Sergeant*.—That construction cannot stand with the words as they are, if any person having committed an offence in England shall escape from, go into, reside, or be, &c. No grammatical construction is consistent with what has been suggested; and what shows that not to be the meaning, is, that this act is founded upon two former acts in England, where the cases were put distinctly. It may be necessary to remind you of the course of the law in England, before and after the union with Scotland; and the object of the present act was, to put Ireland upon the same footing. By the common law, if a man committed an offence in one county, and escaped to another, the warrant was rendered ineffectual; no grand jury could find a bill upon information taken in another county; this was found so great a grievance, that a practice prevailed of backing warrants, but it was against law,\* and the 23rd Geo. 2nd, c. 26, provided if any offender should *escape*, he might be apprehended by a warrant endorsed; that provided for the case of *escaping* or going into. The framers seemed to have imagined that *escape* was not confined to *moving* as in common conversation, nor a local escape, but *avoiding justice* was considered an escape. But to remove any doubt, the English legislature enacted the 24th Geo. 2nd, c. 55, reciting that whereas offenders may *reside or be*—taking in the two other cases—i. e. *may be* in some other county, out of the jurisdiction of the justice granting the warrant, before such warrant issued, and without escaping or going out of the county after the warrant granted—

Mr. Justice *Day*.—The defect of the former

act, as recited, was, that offenders may reside or be in other counties before the warrant granted, and without escaping after it was granted; because were it not for these words, it might be narrowed to the case of residing or being after the warrant granted, and therefore, the moment the offence was committed, without escaping, the offender might have gone into another county, which would not be an escape after the warrant; and therefore the act was passed.

Mr. *Prime Sergeant*.—In your lordship's construction, the offender is supposed to escape, and go into another county, after the warrant is granted, and that the second statute was passed to provide for the case of a man residing or being in another county, though never in that where the offence was committed. What can the words escaping or going into mean? It is suggested that the second statute, intended to operate in cases after warrant granted.

Mr. Justice *Day*.—The 24th Geo. 2nd, recites *in hæc verba* the whole section of the 23rd, and then, whereas offenders before such warrant granted may reside or be, would look as if it intended to apply to such cases.

Mr. *Prime Sergeant*.—Then your lordship supposes the statute to apply to cases of warrants issued against persons who afterwards escape. But that cannot be the meaning, because the former act had sufficiently provided for that; and it is plain, that the act of parliament upon which we are at present contending, took the former ones in the same sense, and the legislature wished to apply them both to Ireland. The former acts applied to counties, &c. and recited that offenders may escape from counties, &c. to places out of the jurisdiction of the justice of the county where the offence was committed. And it is now provided against the case of a person committing an offence in a county in Ireland, and who may reside or be out of the jurisdiction where the offence was committed, showing that the legislature was aware of the intention of the two former acts. It was found that the two statutes of Geo. 2nd did not extend to Scotland, and therefore in 1773, another statute was passed, in which the preamble recites as before, but the enacting part applies to all the cases, by inserting the words, go into, reside, or be, seeming to take the preamble of one act only, but by the enacting part to take in all the cases, not omitting the case of an escape from one county to another.

The act upon which we are now arguing was intended to extend, as between England and Ireland, *all* the former statutes. It is compounded of three acts, and to ascertain the meaning of the last, you will recur to those of which it is composed. Perhaps it would have been better if the framer of the last had taken more special notice of all the former; but it is evident, it was intended to comprehend them all.

\* 4 Bl. Comm. 292.



I have already mentioned, that the framer of the first act seemed to have conceived, that every man who could not be caught was to be considered as having *escaped*, which was therefore thought sufficient in the preamble and enacting part; but if that be so now, one material part, *go into*, must be expunged, as much as the other words *reside or be*.

Having argued upon the construction of the statute, and of those from which it originated and of which it is composed, and the mischiefs intended to be remedied, and that the object was, to put the two countries upon the precise footing upon which one county was with another; I proceed to consider how it affects the Habeas Corpus act.

The Irish act, though we had not that blessing till 1782, has not the clause of the English act, which has been stated. But the argument, as it affects the English act, should have its force. The clause was meant to obviate cases distinct from the present. The subject had never cried out against the proceeding as a grievance, that a man should be brought to the country where he had committed an offence. But the complaint was, that a man charged with an offence was sent to a remote prison, and prevented from applying to the high courts for an investigation of his case, as happened to Stroude and Selden, who were charged with uttering seditious speeches in parliament. They applied for an Habeas Corpus and, surprising as it may seem at this day, they were not to be found. They were removed by the king's private authority, and upon application to know what became of them, the Crown answered, that they had behaved so improperly, it was not thought proper to produce them. And therefore, this grievance was so great, that it was provided, that no person should be sent out of the kingdom.\*

There was no intention of preventing a person charged with committing an offence from being sent to the country where the offence was committed, for trial; and for that purpose the exceptions were introduced, and upon that the question arose, in William's time, of treason committed in Ireland, &c. and so was Lundy's case.

Lord Chief Justice *Downes*.—It is hard to say upon what doubt Lundy's case was referred to the judges. Probably it was, whether the charge was treason or a misdemeanor. Because, if it had been treason, the statute left it in the power of the crown to transmit him. It must have been upon the nature of the accusation.

Mr. *Prime Sergeant*.—It may be so—it could not have been a charge of a capital crime.

Mr. Justice *Day*.—The doubt was, whether he was charged with a crime capital by martial law; for if he were charged with an offence capital by common or statute law, there could have been no doubt.

Mr. *Prime Sergeant*.—In Kimberley's case, also reported in Fitzgib. 111, the same construction prevailed.

It is said that the Habeas Corpus act having made a proviso in the case of felony only, the exception cannot be extended to inferior offences. It is an omission in that statute; they did not reflect upon the case of a misdemeanor or a libel taking effect in one country, though the shot was sent from another. But the object of this last act, when Ireland ceased to be a distinct kingdom, was, to extend the provisions of the Habeas Corpus act to cases inferior to felony. The exceptions were extended, and therefore the statute inserts the words "*felons or other malefactors*," wrong-doers, meaning nothing more than to extend to every case that which before had been extended to felony and treason. If it extends only to wrong-doers, without infringing upon the liberty of the subject, it is not a repeal of the Habeas Corpus act, but an elucidation of the spirit and meaning of it. But if it should be considered a repeal of the Habeas Corpus act, it may be a misfortune to be lamented, but the question is, what is the law? If this be not the meaning of the act, it seems difficult to say, what could be its object; if not extended beyond felony, to what purpose enact it, because the case of felony was provided for? The particular object was, to extend the power of bringing criminals to justice in the country where the crime was committed, though they were residents in another; otherwise it is utterly inoperative. You cannot suppose it was to substitute a backing warrant in the place of an original. The removal of the felon, and the bail of the trespasser was sufficiently provided for, as between county and county. But other cases are remedied by the subsequent statute.

Lord Chief Justice *Downes*.—Mr Macartney contended that this statute could not be extended to cases under felony. You contend, that as to felony it did nothing, but extended to misdemeanors. But it certainly does something as to felony. The ancient practice was, to transmit a felon by the warrant of a secretary of state. Now, this act enables an ordinary prosecutor to transmit him by the warrant of any magistrate, so that it has some effect in the case of felony.

Mr. *Prime Sergeant*.—I must admit it has some effect, and particularly as to backing warrants; but it had not that object alone. A more serious evil existed, as was the case put, of advising an assault in Scotland. One country must not become the receptacle of private malice with respect to another, with impunity. This serious mischief is remedied by the word *malefactor*; and the design was, to extend the remedy which existed between county and county, to the two islands.

The arguments which remain to be considered seem to arise *ab inconvenienti*. I do not deny the tendency of such an argument to elucidate the act; but if it be plain, no ar-

\* VII State Trials, 17; 3 Howell's State Trials, 235.



gument of that kind can be admitted. If so wide an indulgence as is mentioned by Vyner were admitted, it would depend upon every man's private reason, or rather fancy, whether the act was valid, or not. Therefore if any inconvenience exist, it must be remedied by the legislature; if there be danger from prosecutions in Scotland, let people take care how they offend there, let them remember the motto of the Scotch Thistle, *noli me tangere*.

With regard to another inconvenience which has been much urged, that no bail can be taken, it cannot occur in this case, because no bail is offered, nor application to accept of bail. The warrant desires bail to be taken; but it may be said that can have no effect upon the power of the King's-bench, which cannot take bail. Here the question cannot occur, because the crown has consented that bail should be taken, and therefore that inconvenience cannot arise.

Mr. Justice *Daly*.—The statute does not give power to a magistrate to bail, and therefore it is argued, that it does not extend to cases bailable by law.

Mr. *Prime Sergeant*.—If that be so, there is no meaning in the word *malefactor*, evil doer.

Mr. Justice *Day*.—I consider that as synonymous with offender.

Mr. *Prime Sergeant*.—And so is Blackstone's opinion, because he says "all offenders."

Mr. Justice *Day*.—Hale uses the expression bailable malefactor.

Mr. Justice *Daly*.—The word *felony* includes treason, because every treason is a felony, therefore something more must be meant.

Mr. Justice *Day*.—And the expression is, "other malefactors."

Mr. *Prime Sergeant*.—Therefore I argue, that it extends to all crimes whatever. With regard to place, I am free to admit, that it stands between the two countries, as it stood between counties before the statute Geo. 2nd.

Mr. Justice *Day*.—The statute of 3 Edw. 1st gave justices a power to apprehend *malefactors*, and to bail them, &c.; it never intended to give the power to bail *felons*, and therefore the word must extend to inferior crimes.

Mr. *Prime Sergeant*.—The latter statute enables a magistrate to back a warrant, and to take bail between county and county, and if it were not so, he could not take bail, though the offence were bailable, and this power not extending to the present clause, this case must be considered as not bailable. This is an inconvenience to be remedied by a future statute. The want of the recapitulation of the clause tends to show the offence is not bailable *here*; and so far I admit the argument *ab inconvenienti*; but that cannot alter the law.

The rest of the argument relates to the statute being prospective and not retrospective. It has a prospect as to issuing the warrant, and taking the person, but says nothing with

regard to the offence. It extends to all crimes whether committed before or after the act.

With regard to more minute objections, it seems extraordinary that there should be any cavil at the warrant; they may dispute the execution of the warrant, but it is the ordinary bench warrant which cannot be objected to; and it would be extraordinary, that a warrant under the name and seal of the chief justice should be objected to, when the Court will take notice of it, without farther proof.

Lord Chief Justice *Downes*.—With regard to that, there is stronger ground; it is stated in the return, that it is the warrant of the chief justice of England, and that cannot now be controverted. It was not contended upon the former occasion, that there was any formal objection. The counsel confined themselves to the substance of the objection, and argued it with great ability.

Mr. *Prime Sergeant*.—Not having been present, I am unacquainted with the argument.

No objection was made to the reading of the affidavits. Perhaps in strictness though not contradicting the return, they went to elucidate facts stated in the return; that the facts happened at such a time, and that the party was not out of the kingdom, and that he has no mode of compelling witnesses to attend.

This may be a hardship arising from the law as it stands. But with regard to the question, whether this arrest be valid, or not, they cannot apply farther than as an argument *ab inconvenienti*, which would tend to overthrow any act, however positive or clearly expressed.

I have submitted these arguments arising from the words of the statute; next upon the whole spirit, collected from the three acts of parliament from which it originated; and, lastly, the mischief to be remedied; and I am happy, as soon as I have discharged this duty, to have it in my power to dismiss a subject which must be extremely painful to every judicial and every legal mind.

Court of King's-bench, Dublin, Monday,  
January 28th.

Mr. *Curran*.—The defendant has been brought before the Court, by virtue of a Habeas Corpus which issued for the purpose; and the only question to be submitted to the Court, and the only request I shall make, because it would be unworthy to use any other, is, that my client may be discharged. I am demanding and not supplicating for what I consider a matter of right. I do not apply that he may be bailed, not merely because I do not conceive you could bail him, but I demand that he may be discharged.

After the investigation which this subject has had, I cannot indeed but regret, that it was not my fortune to have witnessed the



early part of the discussion. My time to prepare has been necessarily short, but I think he would be a poor lawyer indeed, who could not, upon almost any preparation, sufficiently argue a case of this sort. After the discussion which has taken place, however, it is not necessary minutely to detail the grounds upon which the case has been brought forward. But, perhaps, as there is one of the bench, who has not heard of it before,\* it is not beside the matter, shortly to allude to the facts upon which the application is made.

The writ was directed to a justice of peace having Mr. Justice Johnson in his custody. It appears, that my client was taken in his house in the country, and was brought to town; he understood from the persons having him in custody, one of whom styles himself a magistrate and peace officer, that is, a magistrate and catch-pole in one, that he was on his way to England, and that a ship was lying at the water-side to take him to that country. By some little address he got himself driven to the house of my lord chief justice, who, with that sense of justice and that feeling of humanity which adorn the magistrate and the man, interfered in his behalf. He felt that he was authorized in point of law to give him the sacred privilege of hospitality, till the writ could be obtained. It was issued, and a return made upon it, upon which return the argument must depend.

It appears that a warrant was issued by Lord Ellenborough, the chief justice of England for the apprehension of Mr. Justice Johnson, stating, that an indictment had been found against him in that country for a certain scandalous libel upon the persons concerned in the administration of this country, upon lord Hardwicke the lord lieutenant of Ireland, upon lord Redesdale the lord chancellor of Ireland, and upon one of the honourable judges of this court, whose name having been mentioned in the indictment is the reason, I presume, that the defendant has not the good fortune of his assistance. The return states that this warrant had received the additional sanction of certainly a very considerable personage in this country. It was not to any mean person that it was brought to receive the endorsement, but to a person having had great opportunities of acquiring legal knowledge, and who has attained some estimation in the higher departments of the state. He learned law under the late Mr. Baron Hamilton, whose crier he was, and he obtained credit in the state by a *nolle prosequi* from the crown. Under this warrant so endorsed, Mr. Justice Johnson has been taken into custody in this country; and the question is now, under these circumstances, whether he is entitled to be discharged or not? That question turns upon the construction of the act of parliament, 44 Geo. 3rd, c. 92, intituled "An Act to render more easy the apprehending and

bringing to trial, offenders escaping from one part of the United Kingdom to the other, and also from one county to another." This statute is taken from others which were enacted in England, in the reign of Geo. 2nd, and which were intended for the purpose of preventing persons who had committed offences within a particular jurisdiction, because of the locality of all offences, from escaping unpunished, by reason of their changing their residence, or going to another jurisdiction not having any community of jurisdiction with the place in which the offence had been committed. The first of these statutes was made to prevent the difficulties arising from the change of the abode of the offender, after process had issued against him; and the second statute is an amendment of the first, to extend the remedy to the case, where the offender, not waiting for the process, might have thought proper to change his abode into another jurisdiction, for the purpose of avoiding the first. Under the former of these statutes the magistrate residing in the jurisdiction into which the offender fled, was to endorse the warrant; but that statute did not give the magistrate so endorsing the warrant, any authority to bail. The person arrested was sent to the magistrate, within whose jurisdiction the offence had been committed, and who had originally issued the warrant. The second statute was intended to apply a remedy to the case of an offender who had quitted the scene of his offence, before process issued against him; and it gave the magistrate who should endorse the warrant, a power of disposing of the party when taken, according to law, by bailing, if the offence were bailable.

In 1773, a statute was made for the purpose of introducing the same concurrence of the powers of different jurisdictions in the two countries, between England and Scotland, for the purpose of bringing felons and malefactors, who should so escape, back to the jurisdiction from which they escaped, in order that they should be amenable to justice. The intercourse, or concurrence and co-operation of jurisdiction between the different counties in England was settled by the former statutes. The extension of the principle, as between England and Scotland, was regulated by this last. You will find by looking at the statutes, that as between county and county, they extend to all cases where a warrant could be issued. Such is the style of the two acts respecting counties in England. But it is observable (and I shall have farther occasion to remark upon it) that the act of the 13th Geo. 3rd, which regulates the co-operation between England and Scotland, did not adopt the language of the two acts relating to England, by extending it in terms to all cases where a warrant should be granted. And notwithstanding that the legislature, in the 13th Geo. 3rd had before their eyes the two statutes of the preceding reign, the offences to which they extended, and the description by which

\* Mr. Justice Daly.



they designated those offences, yet in the act which regulates the intercourse between England and Scotland, they abandoned that description, and used a description wholly different; because instead of stating generally, "that wherever *any* warrant shall issue for *any* offence," which would extend to all possible cases of delinquency, they introduced the terms "*felons and malefactors*."

Thus the law continued in England, as between its several counties, and thus it continued as between England and Scotland, from 1773, for now thirty-one years; and at last the same kind of solicitude for establishing a system of judicial co-operation between Great Britain and Ireland took place,

Respexit tamen, et longo post tempore venit:

It passed into a law, having respect to the 1st of August, 1804. There are coincidences of circumstances \* which scarcely admit of comment—and I have observed with how little advantage such cases are attended, because in general, they do not require any explanation—so that really, there is no situation in which a person may not with a clear conscience show his modesty and withhold his comment—and even where it is necessary, much will not be required to make it understood. However on the 1st of August, 1804, this statute received its legal existence, and from a very early period indeed, like a young Hercules, it began its operations in the cradle.

It is the great perfection of law, that it has no childhood—Born of wisdom, it comes into the world armed for action.

Upon this statute of the 44th Geo. 3rd, and upon it only, turns the question.—I am glad that I have had occasion to state to the Court, only as preliminary and introductory matter, the existence of these statutes relating to England—because our connexion with that country is not so young but that we may all pretend to a knowledge of the literature of it; and I am glad, that though the law between Scotland and England has been somewhat argued upon, it does not enter into the subject, because I know nothing of the Scottish law, or language.—I have learned only the languages which are necessary for an Irish gentleman and an Irish subject. I speak Irish as well as I can, I speak English as well as I may, and notwithstanding whatever aboriginal kindred there may be between the highland language of Scotland and that of Ireland, I very cordially decline to debate a question of jurisdiction in Erse.

However, upon this subject of the 44th Geo. 3rd, I lament that I cannot pass it over in the same superficial way. It is necessary that I should apply myself to an investigation of its meaning, and if possible to the ascer-

\* The royal assent was given in Ireland to the Union bill on the 1st of August [1800], the anniversary of the accession of the House of Brunswick to the thrones of these realms.

tainment of its construction; one characteristic of it I glanced at preliminarily, when I stated the common *prima facie* extent of the objects of the two English acts, compared with the objects of the act between England and Scotland. You find the same diversity of description in this last act, which comprehends the objects of the three former namely, to regulate the intercourse between county and county, and also between kingdom and kingdom. "Whereas it frequently happens that persons against whom warrants *are granted* by justices of peace for the several counties *escape* into other counties," that describes an act done by the criminal judge, and another act done by the accused person, by the latter of which, that of the former may be eluded and impunity achieved; by which it became necessary for the legislature to interpose in order to prevent the wrong that would be done by such an act defeating the warrant of the magistrate. It is impossible for any man who ever learned to read, not to feel the plainness and clearness with which the subject intended to be regulated is here set forth:—That offenders being within the jurisdiction where they are liable to trial and punishment, afterwards go without that jurisdiction whose limits confine the authority of the local judge. That is the defect intended to be remedied; and the remedy for it is, that whenever any person after the first of August, 1804, against whom a warrant shall be issued, shall escape, go into, reside or be in any other jurisdiction, it shall be lawful, &c. There is no occasion to pursue the anxious redundancy of phraseology: The substance comes to this, that where a warrant is issued from the jurisdiction which has cognizance of the crime, and the offender goes into another jurisdiction, it shall be lawful for the justice of the jurisdiction where such person shall escape, go into, reside or be, to endorse his name upon the warrant, which shall be sufficient authority, &c. and if the offence be bailable, bail is to be taken. Here let me, merely as I pass, make one observation showing to demonstration, that the word *offender* does not necessarily mean a person admissible to bail; the statute clearly uses the word *offender*, as a person who may be admissible to bail or not; because it says, the magistrate shall proceed with the offender, and admit him to bail or not, as the case may be; which clearly shows that the denomination of *offender* is not in the acceptation of this statute necessarily confined to persons admissible to bail. It goes on and gives directions as to what the second magistrate is to do; the party is to be remanded to the scene of his crime, and the jurisdiction within which his trial may take place, and it provides, I suppose upon the supposition that his travelling may not be perfectly voluntary, that it shall be at the expence of others. So that to whatever improvement he may derive in point of information by such travel, he has to add the



benefit of personal economy, for the expense of the journey is to be defrayed by the public.

Now, as to this part of the subject, some observations naturally occur: here I shall make but few. There is no great hardship, if a common offender of a low class be found who has committed a brutal assault in one county, and staggers over the limits of it into another before a warrant issued against him, there is no great outrage, I say, in bringing him back, when he is sober, and trying him within the jurisdiction, where he is probably known, and in which the witnesses for him, or against him are probably known; at all events he cannot be tried without a possibility of producing his witnesses, if he has a defence; because no matter in what jurisdiction the trial may be had, the process of the law can issue to compel the attendance of the witness.

Another observation which now occurs is, that the policy upon which trial by the vicinage is founded has nothing to do with any of those subjects, upon which the country could have any cause of jealousy with regard to the executive power. It is a mere inferior domestic arrangement, for the suppression of internal misbehaviour, and the advancement of internal administrative justice. As to the state it is out of the question. The liberty of the subject is not infringed; he is tried within the jurisdiction where the fact is charged, and he is defended by the testimony of witnesses whose attendance can be enforced by a compulsory process.

I stated that the defect of justice intended to be remedied was, that persons quitting or going away from the jurisdiction of their offence, and residing or being in another jurisdiction could not be brought to trial. It is observable, that there are four verbs attached to the nominative case, offender. It is one of the meanest exercises of science, when it is obliged to creep its way by verbal criticism; but, when words are not exact, it is necessary to get at their weight, however small the scales by which it shall be ascertained.—There are four verbs, *escape*, *go into*, *reside*, and *be*.—The word *escape* is certainly not used in its legal determinate sense;—In law, *escape* means flight after arrest; it is *escape* from custody;—it is used in a familiar sense, and, I admit, sufficiently intelligible to a common intent; it is the quitting a place, but not the simply quitting it; there are various modes by which a place may be quitted, with more or less ceremony—with more or less of flight—with more or less celebrity, from a mere motive *itinerandi*, *abeundi*, *vel evadendi*.—All these different characters may be annexed to the genuine act of *locomotion*; but, to a person having the smallest knowledge of law, it carries with it the essential difference, rapidity of retreat for the purpose of avoiding some personal inconvenience—to avoid apprehension. It has a clear,

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determinate meaning, if it stood by itself—but, whatever doubt may arise from the expression is removed, when it is premised, that it is the case of a man committing an offence, and knowing there is a bailiff at his heels. There you have the act which begins—the *terminus a quo*—so that there must be a place *from* which he escapes, and a place *into* which he escapes.—It is a change of place, beginning at the point from which he sets out, and which is complete, the moment he passes the bounds of the jurisdiction which he wished to avoid. Therefore, he *escapes* from the jurisdiction, and *goes into* another; and having done that, the statute goes on to describe the alternative that must necessarily take place; i. e. having escaped from one jurisdiction, and gone into another, he must either reside there for some length of time; or if he does not, then he is described by being there. And even suppose some of these words are expletive, what is the mischief?—It is only an anxious description of the person who is to be the subject of the endorsed warrant.

This is very clear, that the commencement of the act, and the operation of it, is limited to the time of the escape—it must be an *escape* after the passing of the act—and the act must also limit the operation of the second verb, *go into*, in point of time; and it would appear a most extraordinary thing indeed, that, limiting these two first verbs, it should have no effect in limiting the operation of the last substantive verb, *be*; and that the mere *being* in a place should be sufficient to satisfy the act. If that word were not auxiliary to the meaning of the legislature, it would, of itself, be completely sufficient; for the former words, *escape*, and *go into*, would be out of the case. And here is a point of view, in which I cannot perceive how the intellect of a human creature can get out of the argument. The statute says, that persons may *escape*, *go into*, *reside*, or *be*, &c. and by those means justice may be evaded, and impunity secured. Therefore, says the legislature, we now enact, that whether there shall be an escape or not, or a going into or not, yet this act shall have effect, and the offenders shall be apprehended! It is impossible for any human creature not to see the folly of that construction. What is the rule of construing acts of parliament, and common instruments between man and man? It is, that every word, which has been used, was intended to convey something, either to add to, or explain what preceded. Will the word “*escape*,” be rejected altogether? Will the words “*go into*,” be rejected altogether? Will the word “*reside*,” be rejected, and all be reduced to one, not signifying any act done, but descriptive of simple existence? The legislature pronounces a remedy, to prevent the wrong doer, by his own act, from avoiding justice, and yet you would recite,

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"Whereas we now enact, that, whether he does such an act or not, he shall be liable; if he escapes, he shall be followed with hot pursuit; but, whether he escapes or not, he shall be taken——"

Mr. Justice *Daly*.---The legislature had two objects in view. Your argument is, that a person could not commit an offence, unless he was in the country where the offence is charged to have been committed. It was intended to secure all offenders, whether they were in the country where the offences were committed, or whether they were never in it; and, therefore, the words "go into, reside, or be," are used. Your construction absolutely supposes, that a man could not commit an offence in a country without being personally there; otherwise you give little or no meaning to the word "be."

Mr. *Curran*.---No, my lord, I do not. The words are, "if a man shall escape, go into, reside or be," and I rely upon it, that the fact of going from one jurisdiction to another is essentially necessary to be coupled with the word *being*.

Mr. Justice *Daly*.---That argument actually supposes that an offender must be in the country where his offence was committed.

Mr. *Curran*.---I shall not accede to that. It does not follow that the legislature did or does contemplate that offences may be committed within a jurisdiction, by persons who were never within it. If the intention were so, see what the language would be, "that a man having committed an offence within a particular jurisdiction, whether he be out of it, or not, may be arrested." Would they encumber that idea, with three other expressions which were not necessarily applicable?

Mr. Justice *Daly*.---No; but my brother *Daly* supposes that offences may be committed by persons who were out of the jurisdiction at the time.

Mr. *Curran*.---I see what his lordship means. The enacting part must be urged farther than the preamble; but no lawyer will deny, that the preamble and the description of the mischief is perhaps the best way to the exposition of the enacting part. What is the grievance recited? The enacting part is calculated to meet it, or something *ejusdem generis*. The preamble states the escape; the leaving of one jurisdiction and going into another, where the offender could not be regularly apprehended, and it is in aid of the latter jurisdiction that the statute is enacted.

Look again to the rule, that every word should have its due operation;---suppose you apply this statute to the case of a man who never had escaped; in order to make it bear upon him, you must of necessity reject the words "escape, or go into," that is, in order to bring him within one particular description, you are to reject every other. Do you reject them in the construction which I give? No; if

he escapes and goes into another jurisdiction, or resides there, or is there after the escape, every one of the rules has its full meaning and effect.

Now, be pleased to consider a little more attentively the part of the statute which relates to the present subject—"and whereas it may frequently happen," &c. (*Vide* section 3.) It would be strange if the Court were, without farther aid, to say, that this meant a constructive criminality, and not personal agency. The statute talks of a person leaving a place, going into another place, and avoiding justice by a corporeal act of locomotion. It would be a strange pursuit after possible exposition, to apply that to a case where a man never was physically in the place where the crime is charged to have been committed, and where impunity never could be obtained, in consequence of a corporeal leaving of that place and passing into another. But to say, though in the preamble, the act describes that as the grievance by possibility it may have relation to other cases, where a man never was in the jurisdiction, and did not leave it by any act done by him by which justice could be evaded, does not seem reconcileable to any principle, when there was no difficulty in saying, that a person resident without the jurisdiction might commit an offence in another, if such had been the intention of the legislature. In the common case of a civil bill, or prosecution for the burning of land, such an interpretation has never been urged; and shall it be pressed, where the dearest rights of man are involved,—Whether he shall have the common privilege of the accused, and the facility of defence? Will the Court in such a case say, that by possibility the legislature may have intended a case of that kind, and therefore in favour of liberty, of law, and humanity, we will adopt a possible construction, without words to support it? I trust not. I shall push this farther in the part of my argument to which I am coming. The words are, "felons and malefactors may make their escape from the jurisdiction," &c. "Be it enacted," &c. and it is of great moment to consider what the meaning of *felons and malefactors* is. In the first part of this statute, and in the two first English ones, the words are such as apply to all species of offenders, high and low. But it is of consequence when you come to decide upon those aggravated expressions, felons and malefactors, to say they are to be melted down, and rendered synonymous with the most insignificant offender who is liable to be prosecuted. Have you any clue by which you can be guided? Yes, this word malefactor, of itself, carries its legal, defined meaning. Now, are you therefore to reject it? No. What, then, are you to do? To elicit, from whatever circumstance you can, the meaning which the legislature affixed to the term. The first question is, do you think they meant to make this clause co-extensive



with the first? You cannot think so, because they had the same expressions before them, and if they had intended to convey the same meaning, they would studiously have introduced the same words, as descriptive of the same degree of criminality. Why perplex their own act by adopting other words? It is said the words are synonymous. I do not believe there is, in our language, a perfect synonyme. In one part of this act, words are used, descriptive of all possible cases; in another part they introduce a totally different set of words. If they meant the two descriptions to have precisely the same sense, they have taken a great deal of trouble to impose difficulties upon those whose duty it is to explain these acts; because, the natural idea of any judge, finding two different expressions in a statute, would be, to suppose there was a difference of sense. Have you no other clue? I think you have two: one, from general reason and principle; and the other, from legal authority. From reason and principle, because it is a totally different case, whether you follow a pickpocket from one county to another, or from one nation to another. What is the principle upon which the *comitas gentium* acts? A clear one. Where the offence is of such a flagitious kind, as almost to be a stain upon humanity if it should not be punished, the *comitas gentium*, in the common abhorrence of the crime, will say, such a criminal shall not have a sanctuary among us. Is it the same with a petty misdemeanor? If a murderer flies to Spain, they will give him up, and say, the country shall not be stained with him; but, if a pickpocket went among them, is that a case in which the power of a nation should be exerted, to send him to the country where he committed a twopenny larceny? The principle is clear and distinct, of national expedience and mutual co-operation.

I said there was legal authority. I speak of the Habeas Corpus law, made for the purpose of abolishing an abuse, which had taken place, of sending the subjects of the realm out of it, beyond sea, upon pitiful allegations, and upon trifling delinquencies. The rights of Englishmen are now ascertained, and a charge of petty delinquency shall not overbear the power that stands between oppression and the accused; and it is enacted, that upon such grounds it shall not be lawful to transport a subject beyond the place of his residence. By that statute, a subject cannot be sent out of the kingdom for trial, except upon a charge of a capital offence. And here give me leave to see how the argument would turn, if the Court should, for a moment, take up the idea, that the merely being without the jurisdiction is sufficient ground for the act of parliament to work upon. If it were so, suppose an Englishman comes here, commits an assault, goes back to his own country, and a warrant issues against him; is he to be sent back to this country? Why; because it is alleged to be a defect of justice if he should not. What is that defect? It is pre-

cisely commensurate to the protection given by the Habeas Corpus act. The charge is, that he has committed a misdemeanor—he is an Englishman—the Habeas Corpus act says he shall not be sent out of the country. The impossibility of sending him out of the country is stated to be the grievance; and yet it is the Habeas Corpus act which has created that grievance, because it is that statute which renders it impossible so to send away a subject. There is a defect of trial—it is sought to be remedied—I care not whether the party escaped or not—the legislature says, he shall not be dragged out of the country, except for a capital crime. But in misdemeanors there is a difficulty in the way. What is it? That great personal security, for which so much English blood has been shed, the Great Charter.

Lord Coke has enumerated no fewer than thirty-four re-assertions of that law, rendered necessary by thirty-four thousand encroachments upon it. The prerogative of the crown, sought to be kept within due limits, burst forth with more violence from being restrained, overwhelming the land with arbitrary power. That is the grievance; and are you now to repeal that law, without the legislature condescending to say, they meant it? A turnpike bill would not be amended without declaring the intention to do so: And, when the legislature is silent will you outrage the constitution, by transporting a subject out of the country? What a foul transaction was it considered, when the duke D'Enghein was taken from a hospitable country, tried in a distant place, and murdered by torch-light? What was this, but removing a little difficulty which stood in the way of trial for the crime of *læsæ majestatis*, for a constructive want of allegiance to an usurper? If a man can be tried in one place, for an offence committed in another, what becomes of acknowledged principles? “Annihilate but time and space;” that is getting over a difficulty, and every spot may be considered as a place of competent jurisdiction. Do not commit such an outrage upon the Habeas Corpus act. There are many ways in which a law may expire without such violence; it may die of a consumption, of an apoplectic fit, or, stript of its garments, it may die of cold. But it is not upon visionary constructions, that the great privileges of the people are to be overborn, and that the so often repeated assertion of right restraining the deviations of wandering prerogative is to be evaded. Is it because the intention was possible, that therefore you will adopt it? By what kind of laws would the English nation think we deserved to be governed, if they were told we adopted this wild repudiation of what little may remain to us?

But I am arguing absurdly! Am I? Is it clear the act did mean it? I ask that question. Never shall the rights of human nature be done away, except by a construction invincibly forced upon you. I do not mean to



utter any thing unconstitutional or illegal. I remember my client has the rights of the accused, and the prosecutor the privileges of an accuser. I speak with respect because of the Court, and I speak with moderation because of the Court, and I restrain the indignation with which I am bursting, if resistance does not give it energy. When the heart is bursting with grief, it is silent—the paltry and trifling concerns of life become the subject of voluble complaint.

I have talked of exposition—I have urged the topics as if they related to distant nations. I have laboured through the course of verbal criticism. I am pleading the cause of the rich and the poor. Thank God! I know the honest integrity of your lordships' minds and the pride of your hearts; I am contending for my client, I am struggling for the rights of existence, asserting the privileges of the constitution, which are not to be measured by pitiful verbal criticism or the sophistry of a clerk, or the testimoniality of a special pleader. You might as well measure the arch of the heavens upon the periphery of a lady's ring.

I come now to another topic. I alluded before to the word *malefactor*, as not meaning any thing perfectly definite. I do not find the word used later than the time of Edward, in the statute *de malefactoribus in parvis* which took away bail from such offenders. But the word has no definite sense in the discrimination of the class or enormity. That cannot be denied me—Very well. Then the particular language of the act, cannot assist you in drawing the line of exact boundary. What then is to be done? Are you to reject the auxiliary word? Certainly not. But as well as you can, from whatever circumstances can assist you, a determination is to be formed, as to the meaning of the legislature in the use of the word. Here I am warranted in saying, that the legislature did not mean to extend the description to every offence, because in that case they would not have used new words. The exception in the Habeas Corpus Act pointed out in what instances general policy required that subjects should be sent out of the country, namely, capital offences; and that act having excepted them, and the present act using the words *felons and malefactors*, I may be warranted in saying, it was the meaning of the legislature to apply those words to the case of capital offenders. This observation derives some strength from the expression in the present statute “no sufficient provision.” It could not be said there was no provision in capital cases, because there was some. It could not be said to be sufficient, because it was not. In the case of misdemeanors there was no provision whatever. It is called in this act an *insufficient* provision, which it really was: the prerogative might be applied for, as was done in Lundy's case, but even that was upon a reference to the attorney-general; and upon an idea that the exertion of the pre-

rogative was warranted by the exception in the Habeas Corpus act, and he was transmitted by a king's messenger. That was a provision—no man could say it was not; but it was not a *sufficient* provision, because it was not a right *ex debito justitiæ*, it could only be obtained by interceding with some minister of state, and laying the foundation for it might be extremely difficult. But it was afterwards made a matter of right instead of a matter of favour, and a warrant issued by a magistrate of one county and endorsed by another, was considered authority sufficient to seize the offender. This then furnishes a natural and corresponding construction to doubtful words.

But is there nothing else in favour of it?—There is. Where the construction of a statute is not clear, what is the rule? As lord Coke says, the words of a statute are to be taken in lawful and rightful sense, and a construction must be made, in suppression of the mischief, and advancement of the remedy; but still it is to work no wrong to an innocent party. Co. Lit. 24, 381. It has been said, that the best way of expounding a statute is to consider what answer the law-giver would make to a question propounded to him; and upon this ground permit me to state the facts.

Upon the return it appears that this is a state prosecution; because it is for a supposed libel upon the lord lieutenant, the lord chancellor, one of the judges, and is of and concerning the public administrative conduct of two of those personages. It is clear, that it is upon a subject solely and exclusively relating to this country; that from the time when the subject matter and the transactions which gave occasion to these letters occurred, the person accused was never out of this country. I lay down these facts in putting this question to you; how the law-giver would answer, if you were to ask him, what was the mischief he intended to remedy, and how it was probable he intended to remedy it? Could it be intended to extinguish the man accused? Let me not be misunderstood upon this part of the case; my client does not wish to avoid investigation of the crime of which he stands accused, where he can have the advantages which a man accused ought to have. What are they? One is that by being tried in his own country he may possess that composure which gives collection to the mind under accusation, and another is, that a sympathy for the accused should prevail, which cannot be where he apprehends the ante-dooming sentence of a court of strangers. Instead of giving him the benefit of a trial you send him gagged to a foreign bar. He can have no witnesses upon a subject relating to Ireland, he has no process to compel their attendance, and therefore you send him for trial to a land of strangers, where if he has a defence to make, he is unable to urge it.

Has a man accused by the state no defence to make, except such as may arise by the testimony of witnesses. He has a great defence,



of which you strip him, by sending him to a foreign tribunal—the feeling of the country upon the subject of the charge. I am not insinuating, that a libeller should not be punished. I am not saying, whether the defendant is criminal or not. The publications may be true or they may be false; but there is not a man in the nation who does not know whether they are true or false. They contain a charge upon the executive government, and shall a man be immolated upon the truth of his own accusation? The accused turns upon the accuser, and may ensure his own triumph. I have had deep and dreadful experience of the perfidy of man, of meanness and of tergiversation; but if a man were prosecuted for a charge upon the government of the country, I would look to the jury for the result; one glance of the eye secures an acquittal. If he could be brought to trial for speaking in their behalf, let them find him guilty, and let him be driven from a country where he deserved not to live, or make a gibbet high enough for him to be seen—his heart and his character might be thankful. But, no, my lords, the accused would have nothing to dread. Should he be apprehensive of the testimonial law, that the truth should not be a justification, no jury could be selected that would submit to such a doctrine, my country would fix her eyes upon a jury who hesitated in such a case, and acquit the victim.

If you put such a question to the legislature as this; is it your intention, that where a person is accused of libelling the state, he shall be brought to a land of strangers, gagged at his trial? Can that be your meaning? The English nation answers and says it was; what need the crown desire more, or what are the remaining claims of prerogative? In case of felony, no counsel was formerly admitted for the prisoner, no speech to evidence is even now admitted, no copy of the indictment is allowed. Anciently the humane absurdity of the law went so far as to say, he should not examine witnesses, upon this principle, that it is presumed the innocence of the party was clear as light, unless the guilt was made as black as night, such is the consideration of the law as between the subject and the state and it reposes no confidence in the humanity of the latter.

When speaking upon this topic, I speak with profound reverence and veneration of whatever august personage carries the sceptre in his hand. But I speak the language of the constitution and never have I, nor by the grace of God, shall I, sully that character; without vanity I bequeath it to my survivors, and may speak upon this point with unaffected and sincere humility.

The law of treason is anxiously jealous between the subject and the state, I mean those by whom the state is governed, and who are responsible for their acts, and there is no more obvious mode of escaping from punishment, than by a state delinquent washing his hands

in the blood of the man who accuses him. But is that all the difficulty you impose by adopting the arguments which have been urged? I have opened but a small portion of them; you are to look to the effect with the composed powers of self command, which creates a formidable exception to the indignation with which every man must hear the case. It is this, a common catch-pole is to take an Irish subject from his native land, and put him into whatever kind of vessel he pleases, to land him wherever chance drives him; no matter whether the prisoner is old or young, sick or well, onward they are to work. The bailiff may enter him as a package in a waggon, or stop him upon the outside of a mail-coach. What is the safety of that man's life? What is the trust you repose? I tell you, an incensed prosecutor is armed with power, he lays hold of his victim; it is convenient to try him where every body knows the fact, but it is necessary that an example should be made; he gets to the other side, he moves forward to London—

Mr. Justice *Daly*.—The prisoner may be bailed at Holyhead.

Mr. *Curran*.—With this small circumstance, if he can get bail; says Archimedes, "I'll move the world!" Can you? "most undoubtedly, upon one condition, if you give me a place for my foot to stand upon." The prisoner may be bailed in Wales! I dare say he may, I should be glad to know in what kind of ale-house the Welsh Taffy would enter into bail; is it in that strange country a prisoner from Ireland can expect to find bail? In the present case he was kidnapped to the house of the chief justice.

Lord Chief Justice *Downes*.—If that be at all material, there is this slight circumstance, he was apprised the day before, that the magistrate would wait upon him.

Mr. *Curran*.—But suppose him arrived in London; what defence can he make there? yes, I think there is one; there is an inborn enthusiasm for liberty, an innate love of freedom, a hatred of oppression and tyranny that would redeem the victim and secure him from the attack of the oppressor. But give such a power to a prosecutor, as the construction put upon this statute would give, and there is not a man in England, from the archbishop of Canterbury to the lowest mechanic, who may not be brought here under colour of this statute, and *vice versa*, and tried upon trivial accusations without the possibility of giving bail. The minister going to the House of Commons may be arrested upon the information of an Irish chairman, and a warrant granted by a trading justice. Mr. Pitt is brought over here *in vinculis*; what to do? to see whether he should be bailed or not. I remember Mr. Fox was here during the life time of this country: in the same way he might be brought over. It may facilitate the intercourse between the islands, any man may travel at the public expense; suppose I gave



an Irishman in London, a small assault in trust. When the vacation arrives, he knocks at the door of a trading justice, tells him he wants a warrant against the counsellor. "What counsellor?" Oh sure every body knows the counsellor; "well friend and what is your name?" Thady O'Flanagan, please your honour. "What countryman are you?" An Englishman, by construction; "very well, I'll draw upon my correspondent in Ireland for the body of the counsellor."

What! my lords, is there no apprehension of an outrage of that kind? There is nothing against it, but the great expense. The two warrants cannot be obtained for less than five shillings of our money. But the expense of the journey must be defrayed by the public; and can it be supposed that the legislature intended, that the public money should be thus drawn upon at the good will of every petty prosecutor, either to gratify his malice, or supply his necessities?

Lord Chief Justice *Downes*.—Give me leave to ask, whether this mischief might not arise in the case of an unfounded charge of felony?

Mr. *Curran*.—No, my lord, accusers are not so easily found in such cases. The atrocity of the charge deters the party from making it. I have witnessed many trials, and I seldom knew a false charge of a capital crime; but there are a thousand instances of false charges of petty misdemeanors.

I shall add to that head of observation, that this is a state prosecution. Yet it must be proceeded upon as every common case between subject and subject. But if any thing can impress this particular case more upon the Court than any other, it is the circumstance that it is a prosecution by the state for a libel; see then what a power is put into the hands of a minister, or the rival of a minister. An experiment must first be made in the province, remote from the seat of government where it may be supposed to pay *sub silentio*. They would not venture to try it in London, to give up an inhabitant of England to an Irish catchpole, and send him upon a voyage to Ireland to know whether he should be bailed or not. It would appal the English nation to have such an artillery opened upon them. It would be to stand before a loaded cannon, while a child with a lighted torch was sitting at the touch hole. If my client must undertake this voyage, let the messenger perform the obsequies by night, and take him to the water edge in the dark, that his countrymen may not see his last look upon his native shore, which he is never to see again. Let not his wife or children witness his departure. He is to be taken to a place, where his innocence cannot appear, for there is no process to produce the witness who can attest it.

My lords, this is an odious experiment. It is of late that this perplexed doctrine of con-

structions has been revived, it flourished before science had attained its full maturity, and when there was nothing but commentators and scholiasts, and constructors. Are acknowledged principles to be explained away by some god-father, producing his adopted manuscript,—"*nullus liber homo capiatur, vel imprisonetur, nisi per legale iudicium parium suorum, vel per legem terræ.*" A manuscript is produced, it came into the hands of a grandfather's executor, by which it appears, that *lex terræ* is for the common people, but *iudicium parium* means something more, it means the judgment of the upper House; the judgment of the peers. This exposes the freedom of the subject, and his dearest rights to the uncertainties of caprice and the vagaries of speculation. It is admitted there are real hardships imposed by this statute, but it is suggested it may be amended; perhaps it may, perhaps it may not; but under the construction contended for by the prosecutor, they are desperate and formidable. If you see one construction which is destructive of former rights, and another which is sanative of those rights, I hope you will adopt the latter. I hope that you will not think this a doubtful case; that it will be understood abroad, that it is not; that the prosecutor will be pleased with his failure; that he will feel a gratifying consciousness at going out of court mercifully triumphant. If there be any latent motive against the accused, it will be defeated by persisting in the present measure; they will exhibit him as a persecuted man, rousing and arming every principle of the human heart to pity and protect him. If they have any object, they will lose it by an odious and abominable prosecution. But grieved should I be to look to the compunction of humanity, or await the satiated vengeance of the prosecutor, instead of the honourable and upright justice of the Court, which is to pass sentence, one way or the other.

Therefore I leave my client with you; he has fled to the temple of justice, he has fallen upon its steps, I trust in Divine Providence, that he will find there a sanctuary, and that your lordships will order him to be discharged from the custody in which he is now detained.

Mr. *W. Johnson*.—If ever a grievous task fell upon any man, it is the present; but upon this, as upon every occasion, I shall disregard personal considerations when a duty devolves upon me; in the discussion, however, I shall exclude every thing of a personal nature, and confine myself to the legal argument. The question is, whether you will discharge the person suing out the Habeas Corpus, upon the ground that he has been illegally arrested; and that depends upon the construction of a recent act of parliament, not hitherto acted upon. The return states the warrant of the chief justice of England, grounded upon an indictment against the defendant for a misdemeanor, and that war-



rant endorsed by an Irish justice of peace: the ultimate question, therefore will be (for with the English warrant, save so far as it is an authority for the magistrate here to endorse it, I have nothing to do), whether the endorsement is a legal ground or warrant to arrest a person here.—You must either not intermeddle at all in this case, or you must discharge the person before you. You have not that middle course which the humanity of the law in all other cases interposes, you cannot admit to bail—

Mr. Justice *Day*.—That has not been argued yet.

Mr. *Johnson*.—I mean to argue it.

Lord Chief Justice *Downes*.—Mr. Johnson I suppose means to argue from that, as showing the construction of the statute.

Mr. *Johnson*.—I mean to argue it as matter of construction, and to show, from that, what construction ought to be adopted; and therefore for the present, I shall say a word or two upon the power of any person in this country to bail in cases of this nature. In this part of the argument you will discharge from your contemplation, the particular quality of the offence, and the particular quality of the offender. You will allow me to argue it as a misdemeanor committed by any man in the community; committed in Scotland, of the law of which you are ignorant; or in England, of the law of which you may know something. Suppose it the case of a simple warrant issued in Scotland; for in all cases under this act, let it be borne in mind by the Court, that the warrant issues from an authority, and for an offence committed in a country utterly distinct, in point of legal contemplation, from the country in which the arrest is made;—it is strongly so in England, though the Court here may have some knowledge of their law; but it is literally so in Scotland, as you are not supposed to have any knowledge of their law there. This is a perfect truism in law, that the legality of the warrant must be judged of by the law of the country where it issued; as in the case supposed under the law of Scotland, surely to know whether a warrant be or be not conformable to the law of any particular country, you must have judicial knowledge of the law of the country where it has issued. But you must not only have judicial knowledge of the law creating the offence, and that it is an offence against that law, but you must be able to determine whether the offence is bailable by that law; for take this with you, that the man before you is not before you as an offender against the law of his own country, he is before you as an offender to be sure, but against the laws of another country, and as such is in custody; does it not follow as a necessary inference, that before you determine whether he is in custody for an offence from which you can discharge him, you must determine upon that law? The power to take bail, and to determine upon the offence, must perpetually meet together.

Mr. Justice *Day*.—Do you mean the power to try?

Mr. *Johnson*.—No, the authority to bail, and so far to determine upon the offence, as to its nature and extent—the application to take bail, and the determining upon the offence must meet together. Does not the authority to bail flow out of the offence? does not lord chief justice Pratt say so expressly, when he says, that in a warrant nothing more is necessary than to state what the offence is?

Mr. Justice *Daly*.—I do not think it necessary to labour this, because I do not doubt the power of the Court to bail, where it is not deprived by act of parliament.

Lord Chief Justice *Downes*.—I understood Mr. Johnson to urge this as a topic of construction, for we are not called upon in this case to determine upon the question of bail.

Mr. *Johnson*.—Nothing more; I am to argue that the Court will not assist the extension of a law, that takes away the common right of the subject, militating against every legal notion. What relation is there between the authority of the magistrate executing this warrant, and the recognizance to be taken for bail? Where is it to be returned? By whom can it be enforced? Where is it to be estreated? If bail be taken here, the recognisors reside in Ireland; to which exchequer does it belong if it be estreated? I shall say no more upon this subject, to show the mischief that arises from taking away the right of bail. If the statute be confined to unbailable cases, no mischief falls upon the subject greater than that which would fall upon him in England if he were arrested for a non-bailable offence there; because he must be brought before a party empowered to commit him. That is one argument against construing this act (if you can avoid it) to reach misdemeanor; if you extend it to one you must extend it to all, and then you say, that the British legislature meant to put this mighty machine into motion, to level in the dust the ancient bulwarks of liberty and the Habeas Corpus law. Shall a man indiscreetly or unadvisedly offending against the law of another country, and having come upon his affairs to the country of his birth, be dragged back, after a lapse of years to the former place without bail? I am sure this Court will have nothing to do with any supposed integrity in the persons now making use of this law, or causing it to be made; they will not from any loose expression in the act, determine that a particular unforeseen case may be brought within it; they will only exercise their judicial understanding in determining what the legislature meant, which was to remedy the difficulties attending the arrest and transmission of prisoners from one country to another; those difficulties had been long felt, often complained of, and were well deserving to be remedied, therefore the stating what the law was in that point, fully satisfies the



expressions of the act; there was no sufficient manner of transmitting prisoners as the law stood. By the statute of Westminster a committal *per mandatum regis* is expressly said to be irreplevisable, and by an equity of construction in process of time, in order that the king might not be called upon to act personally in such cases, it was allowed to the privy council; and, such is the progress of things, it was afterwards exercised by the secretary of state, though neither a conservator nor a justice of the peace. Perhaps there never was a time when such authority would have borne a strict legal examination, and yet upon that authority will depend, the legal power of transmitting persons from one kingdom to another at this day.

Lord Chief Justice *Downes*.—After the Habeas Corpus Act, it was legal.

Mr. *Johnson*.—It could not be questioned after that act in the case of felony; but it was a solitary authority, and could only be called into action *ex mero motu*, or *ex voluntate*. It was a reservoir, which the persons who had the custody of it might open or not as they thought fit, and its locality was confined to a single part of the empire. No ordinary magistrate could, upon any principle of acknowledged law, act upon such a case, and as applicable to cases of escape it was perfectly inoperative. In the case of colonel Lundy who was brought from Scotland, what was the answer of the attorney-general? That he should be transmitted by the warrant from the secretary of state, and in the custody of a king's messenger; and the statute provides that it should be in a mode heretofore done, and I contend that nothing was ever done heretofore, in sending a subject out of the kingdom, but by the king's authority; and well might it be said in the language of the act, that it was insufficient. If the framers of this act thought, that for the purpose of transmitting felons the mode was sufficient, and intended to extend it to misdemeanors, they would have said, that the law was insufficient for the transmittal of offenders lower than capital felony; but that they supposed a law existed upon the subject is manifest from their expression, and it may be inferred that they thought it insufficient for the reasons which I have already stated. I pledge myself in this solemn moment to satisfy every syllable in the act, and to show that upon the construction sought by the other side, you must drive out of the act the most important words in it, because it is the same thing, if they are rendered utterly useless, that is perfectly synonymous; and before I get into the argument let me solicit the Court, having considered this case in every point of view that the human mind is capable of, that if any thing not strictly relevant fall from me, they will discard it from their consideration.

To begin then with the title of the act, it is to render more easy the apprehending and

bringing to trial offenders escaping from one part of the united kingdom to the other; and the mischief recited in the clause upon which the question turns, is the escape, not from prosecution or punishment,—and that I may not be supposed to confound things, I am not now upon the word *escape*, but I think that the part upon which I must succeed; at the same time, I must not trust my own understanding too much, or give up any part of the argument;—the mischief recited, is the escape of felons and malefactors from one kingdom to another; the recital in the third section states that felons and other malefactors in Ireland may make their escape into Great Britain. I must admit with the argument used on the part of the crown, that other malefactors must mean other than felons, but if it does, it must, according to every rule of construction I have met with, mean crimes of the same genus; and the Court will here recollect, that the law now before them, is taken from a law applicable to Scotland, where felony is no term known to the law as descriptive of crime. If that alone had been used, the act would not extend to Scotland; and, therefore, it was necessary to use a word, which, in its ordinary acceptation, would take in offences similar in one country to those which were provided for by a descriptive word in the other.

But even in England many of the *majora crimina* are not felony; Blackstone mentions several, even capital cases, that were not felony; heresy for a while was capital though no felony; apostacy, though not capital, was a most enormous offence; so those which were subject to præmunire were high offences in the law, and persons guilty of præmunire are not bailable, perhaps not by the transcendant power of the court of King's-bench, certainly not by the ordinary magistrate, and that is descriptive of great malefactors who are no felons; the word felons therefore, would not take in all malefactors even of the *majora crimina*. Is not that sufficient to satisfy the words, "other malefactors" where my argument is, to confine it to cases not bailable? If the word malefactor embraces all offenders; if it merely meant *maleficium*, there is no occasion for the word *felons* at all. Now is this meaning, which I attribute to the legislature in this word, to be collected from their conduct when they used it? I say it is; the act of 1773 refers to the acts of the 23rd and 24th of George II. expressly; the framers of the one, must have had the others before them; now the argument is, that the legislature in the act of 1773, by using the words "felons and other malefactors," meant precisely what was meant by the legislature in 23 and 24 George II. If so, would it not have been easy, meaning the same thing, to have adopted the same language, so that he that runs might read? What is the language of the act? "Any person against whom a warrant shall issue." The title of



the act of the 23rd of George the second is for apprehending persons, in any county or place, against whom warrants shall be granted by the justices of the peace; that title is preserved in the 24th of George the second, for amending and rendering more effectual a clause in the act I have stated. The use I make of that is this, that if the legislature had not meant something different from the offence included within the acts of the 23rd and 24th of George the second, they would have used a language, ready to their hand, sanctioned by usage, and so plain that no man could mistake it. With these acts before them, they dropped the title altogether in the 13th of George the third, and the mischief recited is the escape of felons and other malefactors.

Lord Chief Justice *Downes*.—If it does not interrupt this part of your argument, I should wish to know a matter that has been resting upon my mind, whether the preamble of the clause in question is not misconstrued, and misapplied, as a scale to ascertain the enacting clause? It is said that the mischief recited, is the escape of persons; Mr. Curran rested upon that all through his argument; it strikes me, that the mischief is the avoidance of trial. Escape is one mode by which that is effected; and, having recited the mischief and one mode by which it arises, the act proceeds to reach that mischief by meeting that mode and others also; that is the way in which it strikes me.

Mr. *Johnson*.—In the course of the argument I should be sorry to be without the assistance which that part of the act gives me, because I shall show that the construction contended for by the crown, is a construction calculated to avoid trial; I shall come to that upon the head of escape. I was urging that the legislature meant *majora crimina* when they used the word malefactor, and that is no extraordinary position, as appears from the most classic use of the word, by the most correct writers. Mr. South says, "it is a sad thing when men shall repair to the minister, not for prayer but refuge, as malefactors flying, &c." So lord Roscommon uses it in the same sense; so Shakespeare says, "bring forth some monstrous malefactor," and speaking of Macbeth's crime, calls it a "malefaction."

Lord Chief Justice *Downes*.—With regard to this part of the subject, we have a commentary much stronger than you have mentioned, and that is the act itself; the third section recites, "that felons and other malefactors in Ireland may make their escape into Great Britain, and that felons and other malefactors in Great Britain, may make their escape into Ireland, whereby their offences often remain unpunished, there being no sufficient provision now in force for apprehending such offenders, and transmitting them, &c. for remedy whereof, be it enacted that if any person against whom a warrant shall be issued for any crime or offence against the laws

in force in Ireland, &c." And the fourth section enacts for remedy of the like inconvenience by the escape into Ireland of persons guilty of crimes in England or Scotland, "that if any person against whom a warrant shall issue for any crime or offence against the laws of England or Scotland respectively, &c." The inconvenience mentioned in the third section was "felons and other malefactors escaping, &c." and the fourth section describes the inconvenience to be, "persons guilty of crimes, &c." that is, any crime or offence against law; are not these words strong comments upon the words felons or malefactors?

Mr. *Johnson*.—No doubt they are, and your lordships will adopt the construction furnished by them, if it be not subversive of common right. But if I show a construction that will satisfy the words, without invading common right, you will adopt that.

It will not be forgotten that the use I make of this argument, is as a rule of construction. You will avoid that which includesailable offences, if it puts the machine of the state in motion against every petty brawler in the land who departs from one part of the empire to the other. And it would be wrong upon the state itself, that for every petty offence, for every angry letter or speech, written or uttered in one country, by a person afterwards going to another, the expence of transmitting him should be imposed upon the public; for if this be law, it is a common right, and resorable to by every man in the community, therefore you will get out of this difficulty if you can. What compensation would it be to the state to confine a man for a week in London, after the expence of 100*l.* for sending him there? Is that *dignus vindice nodus*?—And here you must put out of your mind the quality of the offence, and that of the man before you, because the law applies to all, and I argue no farther than that you will confine this act to cases which are notailable; because there you invade no public right, nor open a door to great mischief. Suppose a man charged with some insignificant offence, and brought away from this country for trial in England, is fined a mark or acquitted; is he to be brought back at the public expence?—And is the power of the state, which should only be exerted in the case of treasons against the state, to be enforced against every petty offender? That would be breaking a butterfly upon a wheel! I have, therefore, shown that the Court ought to be astute to limit the construction of this act, if they can, within the boundaries I have submitted.

Upon this part I mean principally to rely, that to bring a party within this law, he must have *escaped*. To make myself better understood, I mean this, that the act, supposing it to apply to misdemeanors, means those committed by *actual presence*, and not by *constructive relation*. You will not determine the construction of any act of parliament from an opinion of what it *should* contain,



if you shall be of opinion that it *does not* contain it. If I show that this is a *casus omissus*, it would be enough; but I shall also show, that if the case were within it, it would be fraught with monstrous oppression. You will not legislate, particularly for the purpose of having a common share in the destruction of law and liberty, nor adopt a construction which will level in the dust the ancient bulwarks of freedom; and if I show that the whole view of the act—the title, recital, mischief or remedy—applies to crimes committed by actual presence, and that they alone were in the contemplation of the legislature, you will confine the statute within those limits.

Let us begin with the title: the very marginal note, if it be of any authority, but it at least shows the sense of the man who made it, is, offenders *escaping* into Ireland.

Mr. Justice Day.—The marginal note, by Mr. Grierson, cannot be of authority; but those in Ruffhead's collection may be considered of some weight.

Mr. Johnson.—There, it is persons escaping into Scotland. But is it confined to that? No; because the mischief recited is the avoiding trial by escaping. When upon this part of the case, see whether the legislature, in the act between county and county, had not in view the actual presence and subsequent escape of the offender. The inefficacy of the first act, as stated in the second, is this; the first statute mentioned an escape after warrant issued; that was found to confine the act to too narrow limits: then it is recited in the second, that offenders may reside and be in some other county before warrant granted, and without escaping after warrant granted, therefore, even as between county and county the legislature meant the fact of an escape; that is the common sense of the act. And, if it were necessary, I will show that as between county and county in England, a man could not be arrested for a constructive misdemeanor, a man may commit a misdemeanor far from the place where it was committed, and not escaping from it, but residing and being in another, he will be a principal offender in his own county, and may be arrested there, but is not within the provisions of this act.

I now gladly resort to an expression which fell from your lordship, because I think it will decide this case. You have said, in allusion to a quaint expression used in the course of this argument, that you would be sorry to break the entire shell to get at the kernel; and that it is a bad way, to get at the sense of an act of parliament by rejecting the words of it. It is a bad way, I confess, and I will show that it is they who contend for an opposite construction, who get rid of the words of the statute. By their construction, what becomes of the operative words, "escape and go into?" I will venture to put the whole case upon this fact, strike out these words—and I have done it

with my pen—from the title the recital of mischief and the remedy, and you show the act to be what is contended for by the crown. Nothing is more persuasive than a thing that meets the eye. Read the act without the words, and it is what they contend for. What will be the title? "For apprehending any person residing or being in any county," &c. Suppose the mischief recited, it would correspond with that title. What is the remedy? Read it thus—"And be it enacted, that if any person against whom a warrant shall be issued by any judge, &c. with-  
"in Ireland, shall reside or be, in any place  
"in England or Scotland, respectively, it  
"shall be lawful," &c. and *vice versa*. Is it too much to say, that the argument which renders the title, recital of mischief, and enacting part useless, is absurd? If a person be *alive*, it requires no great sagacity to describe him as *being*; and his existence is enough to subject him to this law.

Mr. Justice Day.—Would it follow that the substitution of these words would render the others inoperative? The escape of notorious offenders from one county to another is recited as the mischief intended to be remedied; but it does not follow, that the legislature had no other mischief in contemplation.

Mr. W. Johnson.—It is perfectly true.—But I do not substitute any word; I endeavour to give operation to each. But the opposite construction renders some of them useless.

Mr. Justice Day.—It strikes me that all these words are operative. "Escape, go into, reside or be," and that each, *reddendo singula singulis*, has its effect; "escape and go into," is the mischief, or two of the modes by which trial was evaded; and they might reside or be in some other county, before process issued.

Mr. W. Johnson.—Well, to make my construction still more plain, I will suffer the entire four words to remain; and by separating them, I will make every word operative. The words "escape and go into," shall describe the person upon whom the warrant operates, and "reside, and be," the place where it shall be executed. To punish escape in the first instance, and to remedy a defect in the second, was really the object of the act. Now, I will ask this question, and I put the whole case upon its issue. Does a man, who never removes from his residence, who is always to be found in the scene of every act of his life, either manifest a disposition to escape, or could he escape the law? What is the language of any informed man upon such a subject? I have citations from several enlightened writers:

"Hast thou escap'd my sword?"

"No, here I dwell, I neither fled nor fear'd you."

Why does the law set its face against escape?—Because the offence is accompanied



by flight, and is in itself a *quasi* felony : it is a concomitant of guilt, and shows a disposition to escape punishment. At common law, flight, whether the party was acquitted or not of the original charge, was a forfeiture of goods, and it is still every day's practice, to put a formal question to the jury, did he fly for the same, or not? It was an act which the law was most anxious to punish. But there was another thing necessary in the case of flight; the remedy must be quick, or the mischief has its full effect, in endeavouring to escape; if the offence were committed in the interior of the kingdom, a man must pass through many counties, and every justice of each county has authority to send a warrant in pursuit of the fugitive. Is the mischief the same in the case of a man remaining at his post? A man continuing to reside where he procured the thing to be done, shows no disposition to escape the law or evade justice. Show me the possibility of a man remaining where he has done the act, not being amenable to the law, and I give up the question. Is that a conduct whereby his offence remains unpunished? So that against the title of this act, against the preamble reciting the mischief, and for no remedy (for upon that I ground myself), you are to work a mischief, from a looseness of expression in the enacting clause.

It will not be said by any man, that the act as between kingdom and kingdom, can have a wider operation than it has, as between county and county, in England. Suppose a man in one county, procures a murder to be committed in another and stays in the county where he procured the act, does he avoid trial? Does he escape? Does he show any symptom of guilt? or do any act by which the ordinary disposition of the law ought to be changed, and the motion of its process should have the celerity of a courier to overtake him? No; he is at his home, in his dwelling, open to all mankind.

But even if it should be supposed that the act as between county and county, in England has a more extensive operation than I would give it, there are words which might warrant such construction; because the mischief recited there is, reside and be, which words are dropt in the present act; that might furnish a different construction. Therefore, I say, when we refer to the principles of the law, we see the same mischief which struck our ancestors in early days; "escape by flight," that is *prima facie* evidence against the supposed offender, and warrants something out of the ordinary course of the law, because otherwise he might evade justice.

And now, my lords, I beg to say a few words upon a very new topic; one that possibly will be heard with some surprise, but which, I beg to be recollected, I only use as an argument to get at the meaning of the legislature. It is manifest that the legislature by this law must have meant, the

punishment of offences committed and triable in England. And if I show, that upon the facts now before the Court, the act to which this law is now sought to be applied is not an offence triable in England, it is a fair inference from that, that it could not be an offence within the contemplation of the legislature.

I do not use this, as showing, that the gentleman before the Court has a good defence in England, if he were brought there for trial—

Mr. Justice Day.—Can we determine upon the laws of England so far as to say, whether it be an offence or not?

Mr. W. Johnson.—So far as this; because it depends upon principles flowing from the municipal laws of every nation. I do not mean to say, he may use it as a defence, in case he be removed by this assumed authority; but I mean to show the act imputed could not be within the contemplation of the legislature, when they made this law. And this will derive considerable light, from a view of some matters which I shall bring to the recollection of the Court, as marking precisely the principles upon which I shall contend.

Every crime which the imagination of man may suggest, is reducible to one or other of these classes, natural, moral, or municipal. Many natural crimes are not municipal, many moral ones are not municipal; as treachery, deceit, cruelty, hypocrisy, ingratitude, &c. I choose the division I have mentioned, because the ordinary division of *mala prohibita* and *mala in se* is not accurate, for this plain reason, that one does not exclude the other, natural crimes are immutable, eternal, and ubiquitous; their sanction is of another world; not so of *mala prohibita*, for the temporal sanction is their peculiar characteristic. This is a truism, that liability to punishment, and a duty of observance are exactly commensurate. Now, what does this liability arise from? (I will come to a distinction by-and-by, between a subject of the king of England, and a subject of the law of England). This liability arises, either from being a subject of a particular community, or a sojourner in it at the time of the offence committed. I defy the wit of man to extend it farther. What are the sources of this obligation? One attaches at our birth and is incident to it; the other arises from our own act, and is imposed upon us by ourselves. How do we define a municipal offence? An act committed or omitted in violation of a public law forbidding or commanding it, by a person bound to obey that law. There is no other definition, which will embrace every attribute of a municipal law; every word of it is material. Authority and obedience are not of necessity commensurate, I know that authority is often extended where obedience is not due, and obedience is sought to be enforced beyond the limits of right;



but I am speaking of the right itself. Three things are necessary to constitute a municipal offence; first a public law; secondly, a fact done within the limits of municipal jurisdiction; and thirdly, by a man bound to obey that public law. I will illustrate what I mean, by a familiar instance. Perhaps no laws in the world are more strictly *mala prohibita*, than the regulations of the revenue; but being of municipal institution, they are as compulsory as any other. Suppose a native and resident of France (whether acquainted with these regulations or not is immaterial) writes to a correspondent in England to do certain acts, the compliance with which would work a breach of the revenue law; upon the doctrine of misdemeanors that person would be a principal in the offence. Now, if that man at any future time came within the limits of England, could he be tried upon the evidence of that letter? I will put a stronger case; suppose a native and resident of France procures a robbery to be committed in England, he could not be tried for that offence, if he afterwards came within the limits of England.

Mr. Justice *Daly*.—You will find in some of the books that natives of France have been tried for offences *mala in se*.

Mr. *W. Johnson*.—I admit it with all my soul, where the native of France was at the time of the offence committed a sojourner in England; he had the benefit of the English law, and under its protection might have hanged a man for picking his pocket. There was a statute enacted in England, 2nd and 3rd Edw. 6th. chap. 24th, adopted in Ireland, 10 Cha. 1st, chap. 17, with the most remarkable difference. It was found before that law, that great difficulties took place in the trial of accessaries, if their offence was committed in a different county from that of the principal; and the statute was enacted for the express purpose of remedying that mischief, and enabling the Court to try the accessory in the county where he committed the accessorial offence; showing that the legislature was studious to try him where he acted, where his witnesses were resident, and where probably he had lived during the whole course of his life; until that time there was no legal evidence of the guilt of the prisoner. I will ask this question; under all the facts before the Court, suppose a seditious libel to be a felony, for argument sake, where could the defendant, supposing him to be an offender, be tried? Where could the offence be presented? Because if it were a felony, the accessorial offence is a distinct substantive offence, and must be presented as such. Where could it be presented? Certainly not in any county in England, no man will be hardy enough to say that; and let the Court remember, that this is not an inquiry into a moral, but a municipal offence, and that it is the rule which prescribes it that governs the individual.

Mr. Justice *Daly*.—Is the offence charged here, merely a municipal offence, and not a natural or moral one?

Mr. *W. Johnson*.—Suppose it to be all, it can only be tried by a municipal law. It is not as a moral offence you could punish it, for there are thousands of moral offences stalking through the land, and you do not punish them, because they are not municipal offences; you must attach municipal regulations upon them.

Mr. Justice *Daly*.—You said that natural and moral offences were eternal and ubiquitous.

Mr. *W. Johnson*.—But their sanction is not of this world, though their obligation attends a man every where, in the desert as well as in the city; but not so of municipal offences, save in the case of treason, which I admit to be an exception, because it is a personal obligation, attaching upon a man at his birth, and which accompanies him, travel where he may; but you cannot punish an English subject for a robbery committed abroad, though it be a criminal offence; but having committed treason any where, he is liable to punishment.

Mr. Justice *Daly*.—Suppose a man in Ireland procured a treason to be committed in England.

Mr. *W. Johnson*.—He might be tried in England, by the statute of Henry 8th, which I shall come to by and by. What can show that moral guilt is not, as such, the subject of municipal regulation more strongly than the case of a man who, committing a robbery without the limits of municipal regulation, cannot be tried? murder is an exception for a good reason, because, before municipal laws arose, God set his seal upon that crime; but even so, though it has that mark of divine wrath, it could not be tried in England, but by the statute of the 33rd of Henry 8th; and what is material is, that it has been determined, that statute does not extend to accessorial offences in murder.\* 1 Hawk. P. C. 119; 2 Hawk P. C. 569, 6th ed.; East, P. C. title, Homicide.

Lord Chief Justice *Downes*.—With regard to this part of your argument, which you are urging with great ability; I wish to know, are you contending now, that the offence, such as it is stated to be, is not triable in England? if so, is that a question before us?

Mr. *W. Johnson*.—I mention it, only as a reason in support of my argument for the construction of the statute.

Lord Chief Justice *Downes*.—If we see the warrant of the chief justice of England against a person for an offence committed in Westminster, can we enter into the circumstances to determine whether that person can be tried there or not?

Mr. *W. Johnson*.—For this purpose; neither the warrant nor the endorsement of it touches

\* *Vide* Governor Wall's case, p. 52, 177, of the preceding Volume.



my argument, he is described as late of Westminster, therefore neither of these documents affect the case.

Lord Chief Justice *Downes*.—I do not understand you exactly.

Mr. *W. Johnson*.—The grand jury of Middlesex have found an indictment against the defendant as of Middlesex; they charge him with an offence there; they decide nothing respecting his guilt; the warrant goes no farther, it authorizes the arrest of him in England, and what force has this document upon you? Is it by means of the legal knowledge of Mr. Justice Bell? the jury of Middlesex thought of no such thing, neither did lord Ellenborough; but Mr. Bell endorses the warrant for the purpose of transmitting this gentleman to England, a proceeding not thought of by the chief justice there; and it is very material to see, that there is nothing done in England, that attaches upon a man in Ireland, to show that he is triable there; there is no legal decision upon it, there is nothing done but by Mr. Justice Bell, and I may well question the authority of his act.

Mr. Justice *Daly*.—Do you mean to say, that there is any doubt as to the identity of the person?

Mr. *W. Johnson*.—Not at all.

Lord Chief Justice *Downes*.—But suppose there were an affidavit that he was not the person, we could not interfere.

Mr. *W. Johnson*.—Certainly you could not; every thing I say is consistent with the return, because what I urge touches not the endorsement, nor the warrant of the chief justice. I was saying, that the prohibitions of unwritten as well as written law, must be reduced to precise terms, the language of one or the other in prohibiting a particular act must be this: "if any person shall do so and so." Does the law mean by that, the whole world? No, it would be *brutum fulmen*, it means subjects or residents, it means nothing else. Now examine this for a moment; something has been said upon the relation between principal and accessory, with respect to treason and murder, I have already shown the Court how they come to be liable within England, if done out of it. The statute of Ireland adopting that of Henry 8th has an extraordinary addition to accessory offences, the statute of 10th Chas. 1st, chap. 17, provides that where the offence of an accessory in murder or felony is committed out of the kingdom, it may be tried in the county where the principal is tried, which is different from the law of England, because that applies only to cases within the realm of England; it frequently happened that a person received a mortal blow out of England, and died within it, or *vice versa*; and therefore the second and third of Edw. 6th was enacted, as I have before mentioned, and the 2nd Geo. 2nd, chap. 21, extended to a stroke given out of the realm; this relates to murder, and to the principal in murder; and the clause in the statute of Ed-

ward, as between county and county, relates only to the case of murder, which from the heinousness of the offence might well call upon the legislature to interfere, though the provisions were not extended to other felonies, except in so far as it has been done by the Irish statute; and therefore the argument on the other side resorts to this, that a man procuring a misdemeanor to be committed in England may be tried as for a misdemeanor in England, when he could not be tried if it were a felony; so that the wisdom of the law is precisely in the inverse ratio of the iniquity of the case, and as crime erects its head, the law is without avail, but lays hold of the pettiest offence in the land.

But it may be asked, and that brings me to another head, shall such an offence as the present go unpunished? The form of the interrogatory begs the question that it is an offence, I mean a municipal offence. I answer that as the law stands, if it were a felony, it would go unpunished; but I answer from the particular nature of the offence charged here, it cannot remain unpunished; any man in this country, who procures a publication of a libel in England, must have actors there; and those who commit the fact of publication, may be punished to the utmost satiety of revenge; fine, imprisonment, pillory, form the ghastly train that follows state prosecutions; that the prosecutor should be able to march from the Solway Firth to the Irish Sea and German Ocean, one would think was a pretty extensive range, and every man publishing within those limits, would be subject to the punishments I have mentioned. Now the effect of destroying the accessory offence cannot amount to the extension of the jurisdiction of the country; it is from the exility of the offence in misdemeanors, that the accessory and principal are confounded. But was that intended to extend judicial cognizance beyond the realm, that is, the smaller the offence, the more enlarged the jurisdiction? *De minimis non curat lex* is the maxim of the law, and shall felons be suffered to escape from the restriction of legal rules, and shall they be extended in misdemeanor to grapple the offender wherever he may be? so that a man might procure a burglary to be committed in England, and could not be punished, but for a trivial offence by a fiction, the arm of law shall reach him in another country. What follows from this head? That the liability to punishment attaches upon the sojourner and the resident; that the obligation to obedience is in one respect imposed upon us at our birth, in the other by ourselves; and that there is a marked distinction between the subject of the king and the subject of the law: that as subjects of the king, we may offend against the law which respects him every where, but as subjects of the law, we can offend no where but where that law is in force.

Then now, my lords, to say a few words upon the great part of this case, which



meets the important mischief recited in the act "that offences may not remain unpunished." It now appears by affidavit,—which not being contradicted I have a right to rely upon,—that previous to the existence of this law, the defendant was in Ireland; that he was here long previous to the events which are stated to be the subject of the publication, and previous to the publication itself, and that he has continued here ever since, which meets an objection that was relied upon with some force. It is said, he is indicted for a libel published on a given day, and that indictment may be supported by evidence of the libel published on another. But if he resided here before the first publication down to this hour, it covers every publication, if there were as many as the minutes which have elapsed since that period: it follows, therefore, in a way that cannot be contended against, that if the defendant be guilty, he must be guilty by procurement; that requires no fuller illustration than this, that no man's hand is long enough to reach from this to Middlesex, so as to manage the composing a letter press there. By legal fiction he may be there, but by actual presence he cannot; that act of procurement may be either by writing or copying the writing of another, or sending it for publication; every one of these acts must be done here. The witnesses to them, of course, reside here, and that act, wherever it arises, which by procurement makes a man an accessory in felony, by legal fiction makes him a principal in misdemeanor, must attend himself, and be carried with him 400 miles off. Now, if it shall be shown, that the defendant was the procurer of the publication in question in London, it is now before the Court that it was published in Dublin. It is sworn, that the circumstances about which the papers are conversant respect Ireland, persons resident in Ireland, and the affairs of Ireland. So that the offence is proveable and complete in Ireland, and no where else; for though it may be proveable in London, it must be by carrying witnesses from hence. Every circumstance, from the first inchoation of the crime to its completion, may be proved before you. But it is sought to drag a party and his witnesses, if he can procure them, hundreds of miles, for what? "that his offence may not remain unpunished!" I will not give vent to my sentiments of the motive, which must govern such conduct.

My lord, I heard an extraordinary doctrine, that the peace of the king was distinct in Ireland, in England and in Scotland, I deny the law. Our sovereign is the king of the British isles, give them what name you will, he is king of right, and his peace is the same in all. The Irish subject, the English or Scottish subject, are all subjects of the king of the United Kingdom, the *pax regis* is the same in all. For what noble purpose is this distinction of the king's peace made? For the purpose of multiplying punishments. This law

will not meet with reception from any criminal judge. The object is avowedly to try the party in each place, and for that purpose to try him first where he can have no defence, in order that they may have judgment. *Valeat quantum*; but I will tell them, that if there were ever so many hundred publications and only one act of procurement, the party can only be once tried. I admit, that if a man be so hardy, as after conviction to publish again, he is a criminal a second time and may be again tried. But if there be one act of procurement only, though zeal may disperse or any other motive of the people may multiply the publication, the man who procures it is but once guilty, having committed one act only.

Lord Chief Justice *Downes*.—I wish to understand you. Suppose there were a conviction in Westminster—would that bar a trial here?

Mr. *W. Johnson*.—If there were but one act of procurement, upon every principle of criminal law, he could not be tried twice; and if he could not procure the record of his conviction, and support it with proper averments, so as to bar a second trial, it might well call for the interposition of the legislature, in order to enforce the principles uniformly recognized in the law. I can imagine an act, ambiguous, if you will, passing the legislature; I can imagine an oppressive use attempted to be made of that law so ambiguously expressed; but I cannot suppose, that a constitutional court of law, with two constructions of an act of parliament, either of which may be supported, will adopt that which invades private rights, interferes with justice, and works wrong. What is it they do?—An act of parliament may furnish comments for a critic, who closely applies it to oppressive purposes. But it is not the duty of a constitutional court to give it such effect. Now, then, my lords, what is it you are called upon to do? In a case bailable from the nature of the offence, *ex debito justitiæ*, you are called upon to give operation to this law, which deprives a man of bail in his native land—to transmit him from thence, where his friends reside to look for bail to a country where he has no acquaintance, much less friends—under a law which was enacted for the apprehension of felons escaping, to take a man who never escaped, nor desired to evade trial; and this you are called upon to do, under the magic of a legal fiction.—If a man be both principal and accessory in misdemeanor, and an accessorial offence be committed here, the offence is complete here; he ought to be tried by the law to which he owes obedience, not by that to which he owed no obedience, and where the public purse is in the hands of the prosecutor, to command or procure any testimony which may be necessary to a conviction, while no human means are allowed of bringing witnesses for the accused.—You are to give the operation to this statute, the provisions of



which are to bring offenders, escaping trial, to justice, by removing them to the place where their offences were committed; and for the purpose of invigorating the means of prosecution, you are to destroy every possible means of defence, and you are to do that, under colour of sending a man to a place where he is charged with an offence, that he *may not escape*. You are called upon to do this in a doubtful case. Will the gentlemen consider that? Surely what has passed before the enlightened judges bears out any man in saying it is a doubtful case, and you are called upon to act thus in favour of undisguised oppression, in support of power depriving the subject of right, for right without means of supporting it, is mockery.

My lords, I have made a struggle, however ineffectual, to uphold the principles of law, the eternal principles of justice, and the common rights of humanity. I know, I shall have the sympathy of the good, though I may experience the sneers of the unfeeling, but I have endeavoured to make a stand against the evil doings of the wicked, regardless of the "proud man's contumely."

*Court of King's Bench, Dublin, Tuesday,  
January 29.*

Mr. Attorney General.—My lord, I shall reply to the observations which have fallen from counsel, on the part of Mr. Justice Johnson, with as much conciseness as I can. So far as relates to the construction of the act of parliament, I have already had the honour to lay my sentiments before your lordship; but as Mr. Justice Daly was then absent, it will be my duty to repeat, what I fear I shall not be able to enforce with any additional argument. It has been well observed that this case must be considered like any common case, without reference to the particular misdemeanor of which the person stands accused, or the particular description of person accused of the misdemeanor. In order to try the act, every possible case may be supposed, and may be applied as tests to ascertain its meaning. We may suppose it to be the case of an innocent man falsely accused, and labouring under unjust oppression; or we may conceive it the case of a flagrant malefactor, dreading punishment, and therefore shrinking from trial. These possible cases, while they are adverted to, for the purpose of assisting the mind in construing the act of parliament, are neither one way nor the other to benefit or prejudice the particular person who has given occasion to the present discussion. I shall endeavour, therefore, to lay my sentiments before you, with every abhorrence of the crime and of the person who has committed it, but without the smallest intention of imputing guilt, merely because there has been accusation. Therefore it will not be necessary for me to take notice of the person on whose behalf the application is made, farther

than to observe upon an affidavit which he has filed, and to reply to what has been expressed of the oppressive use which it is alleged has been made of this act of parliament—enacted, as has been broadly insinuated, for a specific and not for any general purpose.

In all my other observations, I wish to be understood as speaking of misdemeanors generally; and in the progress of the present discussion, I shall be obliged to call your attention to the worst description of them.

It appears that Mr. Justice Johnson is indicted for a libel in the King's-bench of England, and that a warrant, signed by the chief justice, issued for his apprehension. The date of that warrant appears to be the 24th of November, 1804, and I think it foreign to the consideration before the Court, or to those observations to which I am obliged to reply, to state, why the warrant remained unexecuted from November to January. But I shall be excused, if, in reply to some observations, probably expressed with more harshness than was intended, I state, that on the Tuesday before the warrant was executed, it was distinctly intimated to Mr. Justice Johnson, that unless he would sign a paper, undertaking to appear and plead to the indictment which had been found, it would be necessary to enforce the warrant against him; but, that if he would undertake to appear and plead within the first eight days of the then ensuing term, that the warrant should be withdrawn.

Mr. Justice Johnson, in reply, said, that his counsel were out of town, and that he would consult them on their return to town to attend the term, but did not otherwise give any immediate answer, either in the affirmative or the negative.—No reply came on Wednesday—no reply came on Thursday, and, therefore, late on that day, the warrant having been previously endorsed, two magistrates went to his house, at Milltown, informed him they had a warrant to arrest him, and also a paper, which if he signed, undertaking to appear and plead, the warrant would not be executed. But, having declined to sign it, he was then informed by the magistrate, that he had directions to execute it, either on that evening or the following morning, at any hour that should be most convenient to him; and, of course, the alternative being given, though he refused to sign the paper, the warrant was not then executed.

The magistrate, upon his return to town, was directed to write to Mr. Justice Johnson, that he would be waited upon at one o'clock the next day. It was foreseen, that he might apply for a Habeas Corpus, but not until shortly before the execution of the warrant; and, accordingly, copies of the necessary documents were prepared to be furnished to him on his arrival in town. But he required them on the spot, and they were copied ac-



cordingly. This occasioned some delay, and must appear to every one to have been altogether unnecessary. To avoid the inconvenience of taking him out of his own room, a second magistrate was present at the time of the arrest, who offered to bail him on the spot, or to discharge him on his own recognizance; but, refusing those terms, he was brought to town, and he was offered to be lodged in the house of the justice of peace who apprehended him, or in any other house in Dublin, which he might think proper to select; and he was accordingly taken, by his own desire, to a house in Harcourt-street. He then sent a message to me, to request that I would permit him to return to Milltown, in the county of Dublin; and I was at the same time informed, that he said it would require three days to prepare the necessary affidavits for obtaining a writ of Habeas Corpus. I returned for answer, that it was beyond my authority to send him back to Milltown; and, as I knew the term was approaching very near, and that a little farther delay would have the effect of postponing his trial, I desired the magistrate to tell him, that there was no authority to detain him in town, and that he must consider himself on his passage to England. This had the effect which it was intended to produce. He went with the magistrate, in whose custody he was, to the house of the chief justice, who immediately signed the fiat, and then signified to me, that he had done so, but that there might be some delay in preparing and sealing the writ. I therefore instantly consented, that upon Mr. Justice Johnson's undertaking to sue out the writ, and to have it served that evening, he should be discharged. He accordingly was discharged, the writ was afterwards delivered, and, at the appointed hour the next day, the magistrate was prepared with the return to it.

I trust I shall be excused, when charges of oppression and kidnapping have fallen in the course of the argument, for simply reciting a few facts in my own vindication; though I cannot help complaining, that it is a little severe, that, when I am seeking to bring another man to trial, I am suddenly put upon my own.\* However, having been charged with

\* This part of the attorney general's reply produced the following statement, which was published by Mr. Emerson (Mr. Justice Johnson's solicitor) by way of Postscript to the proceedings in the court of Exchequer:

"Considerable pains have been taken to remove the impression which the extraordinary conduct of the prosecutors, in attempting to carry off Mr. Justice Johnson by surprise, had naturally produced on the public mind; and an effort has even been made to throw upon himself the blame of the attempt.

"For this purpose, while the present report was in preparation, a publication appeared in the Dublin Evening Post, putting into the mouth of the attorney-general such expres-

an oppressive use of this warrant, I wish to take the first occasion of meeting and refuting the allegation, and to disclaim distinctly, both for myself and others, the most remote idea of any proceeding towards Mr. Justice Johnson, which the necessary attainment of justice did not indispensably require.

Having thus trespassed upon your lordship, by stating the mode of Mr. Justice Johnson's arrest, I have next to call your attention to the motion for his discharge; for I allow, that the mildness, forbearance or lenity, with which the warrant has been executed, cannot for a moment give it efficacy, if it be not founded in law. That warrant, endorsed by a magistrate of the county in which the party was arrested, is founded upon the stat. 44. Geo. 3. ch. 92. That statute enacts, in the fourth section, "that if any person or persons "against whom a warrant shall be issued by "any of the judges of his majesty's court of "King's-bench, &c. for any crime or offence "against the laws of England or Scotland, "respectively, shall escape, go into, reside or "be in any place of that part of the United "Kingdom called Ireland, it shall be lawful "to arrest him, &c." These words are so plain and obvious, and there is so little difficulty in that part of the act which I have stated—the operative part upon which the warrant is grounded—that I think I might be justified in asking, what quantum of ingenuity, what portion of learning is necessary to make plain words unintelligible? For that being once found, you will have ascertained that portion of intellect, which is necessary to entitle Mr. Justice Johnson to his discharge. They are words, which it is not pretended any plain man could misconstrue—words of no ambiguous meaning or import. But, in order to raise a doubt and cloud upon them, we are to search the preamble of this and of all the other sections: we are to examine the title of the act: to increase the confusion, we are to have recourse to other statutes, with an auxiliary that I have never known resorted to upon any former occasion, namely, the marginal abridgment of the compilers of the Statutes who, in abridging a clause, are supposed to make the act of parliament! We are

sions, as those who know the candour and love of truth which distinguish that gentleman, must know he never uttered. This misstatement, with very slight alterations, and evidently from the same source, has been printed in a pamphlet, intituled, 'Reply of the Right Honourable the Attorney General of Ireland, to the Arguments of Counsel for the Defendant, in the Case of the King v. Mr. Justice Johnson,' from which, as it has not been openly published, though privately and industriously circulated, it becomes necessary to lay the following extract before the public:—

"'It was foreseen, that he,' Mr. Justice Johnson, 'might apply for a Habeas Corpus,



to have recourse to every other statute bearing upon the same subject in England, not to strengthen our act, but to arrive at this

but not until shortly before the execution of the warrant; and, accordingly, copies of the necessary documents were prepared to be furnished to him on his arrival in town. But he required them on the spot, and they were copied accordingly. This occasioned some delay, and must appear to every one to have been altogether unnecessary.—To avoid the inconvenience of taking him out of his own room, a second magistrate was present at the time of the arrest, who offered to bail him on the spot, or to discharge him on his own recognizance; but, refusing those terms, he was brought to town, and he was offered to be lodged in the house of the justice of peace who apprehended him, or in any other house in Dublin, which he might think proper to select; and he was accordingly taken, by his own desire, to a house in Harcourt-street. He then sent a message to me, to request that I would permit him to return to Milltown, in the county of Dublin; and I was at the same time informed, that he said it would require three days to prepare the necessary affidavits for obtaining a writ of Habeas Corpus. I returned for answer, that it was beyond my authority to send him back to Milltown; and as I knew the term was approaching very near, and that little further delay would have the effect of postponing his trial, I desired the magistrate to tell him, that there was no authority to detain him in town, and that he must consider himself on his passage to England. This had the effect which it was intended to produce. He went with the magistrate, in whose custody he was, to the house of the chief justice, who immediately signed the fiat, and then signified to me that he had done so, but that there might be some delay in preparing and sealing the writ. I therefore instantly consented, that upon Mr. Justice Johnson's undertaking to sue out the writ, and to have it served that evening, he should be discharged. He accordingly was discharged, the writ was afterwards delivered, and, at the appointed hour the next day, the magistrate was prepared with the return to it.

“I trust I shall be excused, when charges of oppression and kidnapping have fallen in the course of the argument, for simply reciting a few facts in my own vindication; though I cannot help complaining, that it is a little severe, that, when I am seeking to bring another man to trial, I am suddenly put upon my own.”

“The writer, who personates the attorney general, having thus put him upon his country, and that right honourable gentleman not having expressed any disapprobation of his report, the editor feels it his duty to refute, in the most direct way, the misstatements upon which this defence is rested.

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happy conclusion, that by this “mighty” act of parliament the legislature intended little or nothing. But, my lord, the old rules of

“In the first place, the reader is referred to the statement made in the chamber before the chief justice, and his learned assessors, by Mr. Justice Johnson, the day after the arrest; a statement in which the attorney-general appeared at the time perfectly to acquiesce, when he not only admitted the celerity with which it was attempted to transport Mr. Justice Johnson, but actually vindicated that celerity, upon the ground that a more accommodating conduct in the officers might have subjected them to an action for false imprisonment: indeed this apology appeared necessary at that time to appease the indignation which the uncontradicted statement of Mr. Justice Johnson had excited in the minds of the Court. The officers were likewise present at the statement.

“In the next place the reader is referred to the letters which are hereunto subjoined from sir Henry Jebb and John Barclay Scriven, esq. the only persons, with the exception of Mr. Justice Johnson, the officers, and the editor, who were present at the circumstances to which they relate.

“The editor himself does not for a moment hesitate to declare, that his mind was from the beginning strongly impressed with the opinion, that an attempt would be made to carry off Mr. Justice Johnson,—an opinion in which the judge could not be brought to coincide. Under this impression he had on the first notice of the warrant attended at the necessary office, and had the writ of Habeas Corpus actually engrossed before the arrest was made. On his arrival in town with Mr. Justice Johnson on the day of the arrest, the editor, having inserted the copy of the warrant in the necessary affidavit, instantly repaired to the house of the chief justice, in Merrion-square (where his lordship waited in consequence of his having been apprized on the part of the judge that the writ would be required), and obtained his lordship's fiat for the writ, at the same time expressing his apprehension to his lordship, that an attempt would be made to carry off Mr. Justice Johnson. With the fiat it was necessary to proceed to the house of the deputy clerk of the crown, to obtain from him the engrossed writ, which still required the signature of the chief justice for its allowance: impressed as the editor was with his opinion of what was intended, it may be believed, that he lost no time in returning to the house of the chief justice, where, to his astonishment, he found Mr. Justice Johnson, who informed him, that the attempt had been actually made, and that the fidelity of his coachman had enabled him to defeat it, by claiming the protection of the lord chief justice, which his lordship knowing the steps which had been taken for suing out the writ of Habeas Corpus had immediately

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construction, by which the Court will be governed, will be found perfectly true; apply them upon the present occasion; they will

granted. From this statement, and from the subjoined letters, which cannot, with truth, be contradicted, it is very clear:

"That no message was sent to the attorney-general, requiring three days, or any other time whatever, to prepare affidavits for obtaining the writ of Habeas Corpus.

"That it was not in consequence of any message or intimation from the attorney-general, that the fiat for the Habeas Corpus was so quickly applied for, it having been, on the contrary, obtained by the editor before the arrival of Mr. Justice Johnson at the house of the chief justice.

"That the officer who attended Mr. Justice Johnson did not know that he was going to the house of the chief justice.

"But on the contrary it is obvious, that the attempt (which the editor had expected) was made to carry off Mr. Justice Johnson by surprise, an attempt which can best be explained by an expression, which the report itself puts into the mouth of the attorney-general, 'I knew the term was approaching very near.'—The term was approaching very near, and had the attempt been successful, the editor would not now have to congratulate his countrymen, that a question in which their dearest interests are concerned, has become matter of solemn discussion, not only at the bar and on the bench, but before the great tribunal of public opinion.

"Dear Sir;—I have been requested to look into the argument of the attorney-general, in judge Johnson's case, in the Court of King's-bench, as stated in the Dublin Evening Post of the 28th ult.; and to say, whether the account, there given, of the arrest and subsequent occurrences which happened on Friday, 18th of January, agree with my recollection of such of them as took place in my presence—to which my answer is, that if the attorney-general stated the facts in the manner there attributed to him, he must have been misinformed on the subject. Mr. Justice Bell and Mr. Medlicott having in a coach passed me on the road to Milltown, they arrived at judge Johnson's house before me, but waited till I came up, and permitted me to go in to inform him of their arrival, while they remained on the road: immediately after me, sir Henry Jebb, the judge's physician, came in, and as soon as the judge was apprised that the magistrates were waiting, he directed that they should be admitted—judge Johnson having, after Mr. Medlicott produced the warrant (which he at first objected to), requested to know to what place he was to be taken; he was informed, that the directions given to the magistrates were, to take him to Dublin; and that he might go to Mr. Medlicott's house, or to the house of any person he chose—judge

appear clear and satisfactory. You are first to see, how the law stood before the making of the act: You are then to see the mischief,

Johnson named his brother's in Harcourt-street: and then said he wished to send to the attorney-general, to request that he might be permitted to return to Milltown, to arrange matters for his departure—Mr. Justice Bell undertook to go himself to the attorney-general for the purpose, as soon as they should get to Dublin. But certainly it was not then, or at any other time, in my presence, stated, 'that it would require three' (or any other number of) 'days, to prepare the necessary 'affidavits for obtaining a writ of Habeas 'Corpus,' nor was a word said about applying for such writ. While the magistrates were at Milltown, I was not absent from the room in which they were for more than two minutes, when I went into the next apartment for a pen or some paper. I accompanied judge Johnson in his carriage to his brother's in Harcourt-street: when we arrived there I went with him into his study, when the judge desired, that as the warrant had been executed, his request to be allowed to return to his own house, which he had left without any preparation, might be communicated to the attorney-general: either there or at Milltown, I do not exactly recollect which, I offered to go to the attorney general to ask his consent, that the officer should comply with judge Johnson's wish; but Mr. Justice Bell thought it better that he should be the bearer of the message—but no mention whatsoever was made of wanting time to prepare for obtaining a writ of Habeas Corpus. Very shortly after our arrival in Harcourt-street, finding that my assistance was not wanted, and having an appointment on a reference before Master King, I took my leave. What passed after my departure I cannot know—but I have every reason to be convinced from the conversation which took place between judge Johnson and me, before the magistrates were shown into the room at Milltown, that the judge's intention of applying for a writ of Habeas Corpus was not even hinted at, while judge Johnson and the magistrates were together.—I am, most truly, yours,

J. B. SCRIVEN."

"Harcourt-street, 12th March, 1805."

"J. S. EMERSON, Esq."

"Dear Sir;—In answer to your desire, that I would mention all I recollected of what passed at the time of your arrest on the 18th of January last, at which I happened to be present.—

"I have a perfect recollection of the entire transaction:—On my calling that day to visit you, the servant showed me into your study, where I saw you, counsellor Scriven, and Mr. Emerson your solicitor; supposing you engaged on business, I attempted to retire, on which you called on me to remain, observing to me that I did not intrude.



which the legislature intended to remedy; and you are so to interpret the words, that the remedy may be extended, and the mischief corrected; and, if the words be sufficient to embrace the whole of the subject, you do

“ ‘In a very short time afterwards Mr. Bell and Mr. Medlicott were introduced, who, with some previous apology, said, they had an order for arresting you; they both appeared in one and the same character, as people employed to make the arrest; except that Mr. Medlicott was the person who had the order, and made the arrest; and Mr. Bell seemed rather to assume the direction of the proceedings.—The first circumstance that then took place was, your asking for a copy of the writ, or order (perhaps I mistake terms); they hesitated as to compliance; even as to allowing it to be read; observing, that on your going to town, you would have a copy of it from the office: both you and counsellor Scriven argued much to convince them, that you were by law entitled to it; and, on your peremptorily demanding of him (Medlicott), if he took it upon himself to refuse it; after some consultation between him and Bell, he allowed it to be copied.

“ ‘You then asked, what you were to do? and was answered, that you must instantly be brought to Dublin, unless you would sign a written paper that they produced to you; this, you said, you could not then do, nor finally determine upon without the advice of counsel, who were then absent, and to whose direction you had determined to submit your conduct. No other alternative whatever was offered. You then requested to know, what you must do on getting to town? Mr. Bell replied, that you would be permitted to remain at Mr. Medlicott's house, to which Mr. Medlicott assented, and added, or at any other house you should choose; you expressed your thanks, and said, you would prefer your brother's house in Harcourt-street; on which you all prepared to set off to town, and went accordingly to Harcourt-street.

“ ‘I followed in my own carriage, and consequently got into your brother's in a few minutes after you; Mr. Scriven and Mr. Emerson were, however, gone from it.—I found you, Mr. Bell, and Mr. Medlicott, in the back parlour together; after a very few words of general conversation, you remarked, that you left your family at Milltown, without informing them of this transaction; that they had no knowledge of what had passed, and might be greatly disturbed by what they might hear; and you desired to know, if you might be indulged in returning that night to your own house? Mr. Bell, with much apparent kindness, said, he would go and see the attorney-general.

“ ‘After an absence of some time, he returned, and said, he had missed of him, as he left home, but he would go again, and seek for him in those places likely for his being

not carry the law into effect, if you diminish their operation.

It is not, give me leave to observe, that the act *may* operate upon *less*; the question is, has it not operated upon *more*? The ques-

found at, and use his endeavours to see him; he accordingly did so; and, after some considerable delay, he returned, saying, that he was sorry to be the messenger of ill news, for that the attorney-general said, ‘he would not interfere.’ On this you said, ‘then I must give directions for my remaining and sleeping here.’ Mr. Bell then said, that he was very sorry to be obliged to announce more ill news, for that the orders were, that Mr. Medlicott must proceed with you instantly for England.

“ ‘He then took Mr. Medlicott apart, when they consulted together for some time, and Mr. Bell went away.

“ ‘When he was gone, Mr. Medlicott said, you must go directly to England, and requested pen, ink, and paper, and that a messenger might be procured to take a letter to his house.

“ ‘You spoke of the hardship on you of this unexpected hurry; that you had not left money with your family, nor had a guinea in your pocket; and that it would be absolutely necessary for you to call at one or two places before your departure. Mr. Medlicott said, he would call any where with you; and was then shown into the office or street parlour to write his letter, leaving you and me in the back parlour together; you appeared much agitated; walked up and down the room; observed that this proceeding was a sort of kidnapping, and that you were taken by surprise; that if you could see lord chief justice Downes it would not be suffered, and you did not know what to do. I asked you why you might not see him, as he was certainly at home? and you answered, you apprehended Mr. Medlicott might not agree to go there, and you therefore requested, I would direct your coachman to drive you there.

“ ‘I accordingly desired Mick to bring the carriage to the door, and not to heed any directions that might be given to him as to where he should go; but whenever you got in, to drive directly to judge Downes, in Merriion-square.

“ ‘Mick did his business very well, and saved you a disagreeable passage in a wherry, that I understand was kept in waiting in deep water, to avoid the delay of a few hours for the packet, which was to sail with the next tide.

“ ‘As to what you ask relative to any mention about Habeas Corpus, or the delay of three days to prepare a writ, there was not a word of any such matter; nor any reason offered by you for wishing to return to Milltown, except as before, to relieve the anxiety of your family, who were totally unacquainted with what had happened, and to prevent the distress which what they might hear must



tion is not, whether, garbling the act, taking words out of it which are in it, something may not be found, upon which it still may attach; but the question is, "give it any other operation than I give it, and does it not leave part of the mischief precisely where it found it?" And will not a disgraceful class of malefactors still find, in their local situation, a protection from justice?

The first objection which has been made to my interpretation, is, that, considering every thing, the legislature must have intended to confine the remedial act to *capital cases*, and not to extend it to misdemeanors.

Now, how did the law stand before the statute was enacted? I assert, that the king, by his prerogative, might have removed from one part of his dominions to the other, all persons charged with capital offences, in order to abide their trial. I appeal to the uniform experience of every person conversant with criminal proceedings in the two countries, for the truth of this assertion; and it is farther founded upon the authority of the English Habeas Corpus act. This act was conceived in great jealousy, at the conclusion of the reign of Charles 2nd, and shortly before the accession of James. The legislature had some recollection of abuses which had been committed, and having anxious feelings that such abuses should not be renewed, the provisions of this act were conceived in the warmest regard for the liberty of the subject.

The 12th section of the English Habeas Corpus act, restrains the power of the prerogative from sending any man out of England; but by the 16th section it is provided, that this clause shall not extend to persons, who may have committed capital crimes in the places to which they shall be sent. The Irish Habeas Corpus act, having been enacted in the reign of his present majesty, it was not thought necessary to entertain that jealousy of the House of Brunswick, which the legislature had entertained of the House of Stuart; and, therefore, the Irish act does not contain the general prohibitory clause, which is in the English act, or the proviso which restrains it. It leaves the law as it found it, with regard to the prerogative of the crown—This prerogative is clearly recognized by the Irish statute alluded to by my lord chief justice, 8 Geo. 1, ch. 9, made perpetual by the 31st of the king, chap. 44, which facilitates the transmission of those capital offenders to England, and as far back as experience can reach, or history teach us, it has been the uniform practice. Did there ever occur a single in-

stance of a capital felon escaping punishment, because the secretary of state refused to transmit him? And, therefore, if the present act be confined to capital cases, it is meant to guard, not against obvious mischiefs, which stared the legislature in the face and occurred in every hour, but against *possible cases*, which no history will show to have occurred. Then what are you to understand by the act? The gentlemen on the other side fix with great fondness upon the words "sufficient provision," and that heretofore a capital felon could only be transmitted by a warrant of the secretary of state. But it is said, that, under this statute, he may be transmitted by a common justice; and then the Court is gravely told, that the operation of the entire statute was merely to change the person who was to transmit, and that it has no farther operation.

But what becomes of these words, "whereby their offences often remain unpunished?" I will ask any man, whether the legislature meant by those words the obstinacy of the lord lieutenant, or his secretary, in allowing a capital malefactor to remain at large, and his crimes to pass with impunity? Or whether it was not rather intended to embrace by the act, the entire class of offenders which under the existing laws could not be rendered amenable?

Perhaps, upon this part of the case, I am unnecessarily elaborate; because, it must be obvious to the plainest understanding, that, with regard to capital cases, the act is little more than a dead letter; the object therefore of my argument is, to show that inferior offences are more within the mischief to be corrected, and that the words adopted by the legislature are sufficient to bring them within the same remedy.

To support the construction proposed on the part of the defendant, it is contended, that the words "felons and other malefactors" do not embrace minor offenders, and that the word "malefactor" is not applicable to a man who has not committed one of the greater crimes. In my judgment, the word extends to offenders of all descriptions; my construction of the word "malefactor" does not necessarily deny, that a malefactor may be a man who ought to be hanged; but their construction denies that he is a man, the measure of whose guilt may be satisfied by the chastisement of whipping. They suppose that a malefactor must be ripe for execution. I suppose he may be also a man, guilty of an inferior crime, and who may be stopped in his career of vice by timely and salutary punishment.

The first observation that naturally occurs, is, that where the words "felons and other malefactors" are used, they must mean, "malefactors *other* than felons." Now, if the word applied only to superior crimes, I might lay it down as a general rule, that though there may be felonies, which are not

otherwise create in your absence.—I am, my dear Sir, your's most truly, HENRY JEBB.  
"Stephen's Green, March 15th, 1805."

"P. S. Mr. Medlicott certainly did not consent, nor did he know you were going to judge Downes's."

"To the Hon. Mr. Justice Johnson,"



capital, yet there is no capital offence which is not a felony. 1 Hawk. 99. But, to support my argument, that position is not necessary to be maintained in its full extent—however I must observe, that the exceptions stated yesterday, of apostacy, heresy, and præmunire are unfounded, none of them being capital offences by the laws of England at this moment.

Now, that the word “felon” extends to cases not capital is manifest; petty larceny is not capital, yet it is a felony—then, who will suppose that the legislature laid hands on the petty pilferer, and yet permitted the malignant slanderer to range unmolested?

Then look to the meaning of the word “malefactor”—it signifies an evil doer, literally: taken in the common acceptation of the English language, it is an offender against the law, *vide* Johnson's Dictionary. By the way, this work is no indifferent repertory of belles lettres, and has been resorted to with great success by those who conceive the poets to be the best commentators upon an act of parliament. But look to the word as used in our ancient statutes. The statute *de malefactoribus in parvis* applies to inferior offenders—and in a passage in the second vol. of his P. C. p. 136, in observing upon the statute 34 Edward 3rd, Sir M. Hale speaks of malefactors being bound by justices of the peace to their good behaviour; and, therefore, it is a decided authority, that the word malefactor may be used as descriptive of an inferior offender. You will please to recollect also, that the person apprehended here, is to be taken before a magistrate to be dealt with as if he were arrested in England, which implies a discretion, and seems to extend to bailable cases. And when you come to the enacting clause, it does not refer to the preamble, it does not say, “such person against whom a warrant issues,” but “any person, &c.” So that if the words in the former part were not sufficiently extensive to embrace the case, which I contend they are, yet the latter words do, beyond all possibility of doubt. They embrace the case of any man against whom a warrant issues. To make him subject to this act, it is only necessary to show the existence of a warrant against him, under which he might be legally arrested in the country from which it proceeds. In any other construction, what line has the magistrate or the constable to direct him? Can human prudence protect them from actions of false imprisonment?

Give me leave to put it in another way. Suppose I should be called upon to prepare a draft of an act of parliament, to do away the doubt; I should begin by reciting, “whereas “some persons of singular sagacity in the “laws of Ireland, have considerable difficulty “in understanding the words *felons and other “malefactors*; be it therefore declared and “enacted, that those words shall be held, and “construed to extend to all persons guilty of

“any crime or offence against the laws of “England and Ireland respectively.”

This, certainly, would not be *ignotum per ignotius*, for it would be explaining the act, by using the very words which are to be found in the statute which is sought to be explained. It is impossible to resort to any more comprehensive, and I know of no species of crime or offence that they do not include. You are not to torture the plain meaning of the words, in order to render the act unoperative. You are not to cast about for a hook to hang a remnant of the law upon; you are not to strip it of its legitimate energy and force, and then expose the ineffective skeleton, in mockery of the legislature.

I cannot conceive how it is possible for the human mind, whether looking into law books, or dictionaries, or taking common sense for its guide, considering the pre-existing laws, the evil to be repressed, and the remedy adopted, to hesitate in saying, that the legislature meant to embrace all offences and all offenders. In the odious catalogue, none can seek for exemption.

It has been pressed upon this part of the case, that you are not to remove a criminal for a lesser crime, in a manner that might be so inconvenient to him. It is at the same moment admitted, that a person guilty of a petty larceny, under twelve pence, may be removed, as well as a more atrocious offender, and that he clearly falls within the provisions of the act as a felon. Does he, who with malice prepense inflicts the vengeance of the sword, meeting his adversary in the dark, and striking him unseen; does he, who sends his poison into other countries, whether for the body or the mind, whether by arsenic or libel; does he, who writes from the malice of his heart, or who lives upon the reputation of others, when he can no longer subsist upon his own, seek to be compared with every common pilferer, and to profit by the comparison?

There was a long dissertation, upon this part of the case, between moral, natural, and municipal crimes; and a conclusion was drawn, that the defendant, having resided in Ireland, when the fact was committed, could not be convicted in England, for a publication there.

If the position were true it would be foreign to the present argument, and I do not know what benefit was sought to be derived from this division of crimes. A libeller is held to be an offender against the laws of God and man. His offence is prohibited in scripture, in two or three places, and the commandment of God, that we should not bear false witness against our neighbour, should be an awful admonition to him. It is forbidden, also, by the municipal regulations of the land. But it seems there is a magic in the local situation of the offender, which may protect him from punishment, notwithstanding this act, which was intended to strip him of that local protection. Shall the arm of the criminal be



co-extensive with the empire, and shall the arm of justice be fettered to the spot where he resides? Shall he be allowed, with impunity, to range along the borders of one country, casting his poison into another, and polluting it with his crimes? It is said, upon this head, that you could not punish an accessory to a felony, if, at the time, he did not reside within the jurisdiction where the principal offence was committed. I admit you could not, if there were not particular laws to reach him; and in this case, if there be not a particular law to reach such an offence, it should be provided for. Yet if an accessory to a felony may escape from an imperfection in the law, that is no reason why the perpetrator of a misdemeanor shall escape, where there is no such imperfection. But in Ireland the difficulty suggested does not occur. By the statute 10 Car. 1, sess. 2, chap. 19, "if a man, whilst residing in England, be accessory to a murder or felony in Ireland, he may be indicted, tried and convicted in the country in which the principal is convicted."

But if we had no such provision in our law, will any man contend, that though a criminal of a certain description be taken in the fact he shall not be tried, because sufficient provision has not been made for the punishment of a greater offender? Shall the good fortune of one man protect the crimes of another? The statute however declares, that a person who commits an offence while out of a particular jurisdiction, shall yet be punished within it; and justly, for reason tells us, that many of the most abominable and cowardly crimes do not require the personal presence of the perpetrator. Suppose a man sent pills under pretence of administering to the health of another in England, but in reality to poison him, and the party dies; is such an offender to say, "he was not in England at the time of the offence committed?" Shall he who murders by poison sent with his own hand, be allowed to say, "I am not within the act of parliament; it was meant to fasten upon those who *escape*. I shall *escape* punishment, for I did not *escape* from the country in which my crime was committed."

This leads me to the second head, and is an argument to refute the position, that the statute applies only to persons who being in one country commit a crime and fly into another to avoid punishment. If you give it that construction, the poisoner escapes, the libeller escapes; all that train of crimes which debase the heart, and show the cowardice of the criminal because committed in supposed security, will be relieved from the operation of an act which professes to apply itself to all offenders. Is not this a case of such enormity as is within the provisions and words of the statute, so as to enable the law to grasp the offender? and will you stand between the law and its legitimate operation? But the feelings of the Court have been addressed on this occasion,

and, through the Court, something has been said to the public. I entreat you, however, not to let every criminal embody himself with the liberty of the people, and suppose there can be no freedom in the land, but while it is an asylum for malefactors. I like to hear fine sentiments chanted from the dock; but, my lord, the liberty of the subject is to be preserved by other hands, and he who attempts to support it by defeating the law, will find himself miserably mistaken. But I cannot pass over the language which has been used, of "constitutional law and constitutional judges;" how I love to see a judge passing over the law to grasp at the constitution—mounting the liberty of the subject to ride away from an act of parliament! This Court will not exhibit such a picture; for my part, I do not understand the distinction in a court of law; I consider the laws as embodied in the constitution, and I do not feel that they can have any separate existence. If you cannot get out of the act by legal construction, look not to the constitution to help you out of the difficulty. He who is most obedient to the law is most faithful to the constitution. Construe this act so as to forward the remedy and repress the mischief, and you may despise the vain and idle attempts of any criminal to excite a public feeling in his favour, whose only pledge to the constitution will be his resistance to the law.

Your lordship knows, that the first statute which related to county and county passed in England is the 23 Geo. 2d; it extended to any person against whom a *legal* warrant issued, and it was confined to the cases of *escape* and *going into*, and it did not provide bail. The legislature found there was a defect in speaking of *legal* warrants, and in not providing for bail, and it was doubtful what species of *escape* fell within the act; it also occurred that a variety of crimes might be committed in a county without *going into* it, and therefore the act was amended by adding the words "*reside or be*;" these words embraced cases which the former were inadequate to reach. These acts having provided for cases only between county and county in England, it was found unreasonable that the benefit of a law which operated as between Cornwall and Cumberland, should not operate as between Cumberland and the next Scotch county, and it was thought necessary to enact a statute for that purpose in 1773. Here let me remind you, how much we have heard of the efficacy of a young act of parliament; that it is as strong as an old one; that the moment it was enacted, an unfortunate malefactor was seized under it; and something has been hinted at by a silence most expressive, that the act, young as it was, knew what it was about, and had a certain object to achieve. These silent expressions, not less eloquent for being dumb, are refuted, by stating in this open court, that this law was enacted to put Ireland and England upon the same footing



to all intents and purposes as England and Scotland were before. It adopts the words used in the statutes 23rd and 24th Geo. 2nd, and those of the 13th of the king; the same expressions which were used in legislating, as between the several counties in England, and the same which were used in legislating between England and Scotland, are now applied as between England, Scotland, and Ireland; and therefore, whether the statute be defective or not, it cannot be said to be an occasional act, made for a particular purpose. It was intended to render the law between the two countries similar, and if it has no merit in itself, it has at least precedent to support it. As to the slavery which it is said to introduce, the good people of England will be astonished to find that they have slept under this oppression for thirty-two years, and at length have been awakened from their slumbers by the outcry of Irish malefactors.

I thought it right to say so much in vindication of the act, because to me it was a little astonishing, that the counsel for the defendant, who refused to be tried himself, who denied all competency to try him, should feel confidence sufficient to indict the legislature of having committed a high misdemeanor in enacting this law, to put every gentleman upon his trial who had forwarded the act, and even those who never saw it till it was in print, but had the misfortune to fall under his displeasure for directing its operation in Ireland.

Having thus endeavoured to acquit the persons accused, I shall show, from the sound construction of the act, it is impossible to confine it merely to persons who escape. It is manifest, that if it were not intended to reach a man who was not in the country where the offence was committed, the two first words would be sufficient. For no man could in his proper person commit an offence in England, and be in Ireland, without *escaping* there, or *going* there; for how could a man be arrested in his proper person in Ireland, for an offence committed in his proper person in England, unless, after committing the offence, he escaped or went into Ireland, and therefore they use the words *reside or be*, which must be words of operative meaning, applicable to the mischief, which it must be acknowledged pre-existed. They are words of strong and distinct signification. If you strike out the words, *reside or be*, you certainly diminish the operation of the act of parliament, and suffer part of the evil to continue, which it was intended to correct.

But then it is said, on the other side, that if that construction be right, strike out the other words, *escape and go into*, and the remaining words will answer. I agree with them that if either clause ought to be struck out, it must be that which comprehends the lesser description, the insufficiency of which had rendered the other necessary; the latter comprehends the evil of *escape and go into*,

and also the other evil which it was intended to remedy; in other words, strike out the expressions, *escape and go into*, and you will have an act of parliament co-extensive with the whole mischief intended to be remedied. But strike out the latter words, and the act of parliament is utterly insufficient to remedy the evil. Now, we know, it frequently happens, that the legislature may use three or four words, not synonymous, though tending to the same thing; and therefore, if you are called upon to strike out any words, which will you strike out—the comprehensive words which embrace the others, or the less comprehensive, in which the others cannot be embraced? In other terms, if you feel yourself at liberty to weed an act of parliament, will you weed it of those words which promote its effect, or of those words which diminish its operation? I have pointed out several classes of offenders who will escape punishment, if the latter words be struck out. But inasmuch as a notable discovery was made, by which the entire four words are permitted to remain, it may be necessary to observe a little upon this second construction. It seems that a word or two becomes necessary to be introduced for this purpose, and will have the effect of making very great jargon of that which was very good sense; the exposition is this, the four words are to remain, but then, they are to be separated, and the two first are to be applied to the person, and the two last to the place; thus at the expense of a little law, a little grammar, and a little good sense, the *person* to be apprehended, is the person who *escapes* or *goes into*—and the place where he is to be apprehended, is the place in which he shall *reside or be*—O! sapient and sagacious legislature! With what wisdom hast thou provided that a man shall not be taken where he is not to be found! with what timely providence hast thou pointed out to the constable the precise line of his duty! you first describe the offender, and then you provide, that he shall never be arrested, but in the place where he shall be! The person who escapes from England and goes into Ireland is the *person* within the act. But what do the words *reside or be* mean?—Oh; they have nothing to do with the *person*, they only guard against the indiscretion of the constable, who might otherwise arrest a man in one county, while he was innocently employed in another. There may be good sense in this argument, but I shall leave it to be discovered by others, protesting, that to my humble judgment, it is a construction which passeth all understanding.

Upon the subject of the construction of acts of parliament, I think it a waste of time to cite many authorities: but as the preambles of the act of last session, and of the several other acts upon the same subject in England, have been strongly relied upon, to control the enacting part, I shall refer you to a very penal statute in England, in which the legislature



indulged in a length of preamble, which, if attended to, would have considerably abridged the efficacy of the enacting part; but unfortunately for the culprit, the enacting part was very clear. I allude to the 9th Geo. 1st, c. 22, for sending threatening letters, 2 East, P. C. 1113. The opinion of the twelve judges was taken upon the point, how far the enacting part was controlled by the preamble. They decided against the preamble; and Mr. Justice Buller, in giving the opinion of the judges, uses these words, which are strongly applicable to the act now before you.

“Where the enacting clause of a statute refers to such offences only as are mentioned in the preamble, it may thereby be controlled or restrained; but in this case it would be doing violence to very plain words, and repealing some of the obvious provisions, if it were so restrained. It is no uncommon thing for a statute to recite a particular mischief as the cause of making the statute; and yet for the enacting part of it to embrace more general objects, and to extend to other cases which the legislature thought within equal mischief.”

Another argument which has been mentioned is, that this statute is prospective as to crimes, and cannot attach upon a person whose guilt was complete before the 1st of August last, and that to give it any other construction would make it an *ex post facto* law. With respect to this, you will observe, that there is no reference in the act to crime; it is confined to criminals; it does not add to the catalogue of crimes—nor does it take one from it. It leaves all things where it found them, except the criminal. It seeks to bring him within the jurisdiction where his offence was committed; but it does not touch upon the crime, or make any alteration in the evidence of it. But here, the crime of which the party is accused, may have been committed long since the 1st of August, and therefore in point of fact there is no ground for the objection which has been made; it is equally without foundation in point of law. The act gives a new mode of apprehending an old offender; but is every new process for bringing in a delinquent to be called an *ex post facto* law? As well may a constable newly created, be called an *ex post facto* constable. I thought this appellation was given to a law which, after the fact done, made that criminal which was innocent before. The distinction seems too plain to be misunderstood.

My lord, the last objection is drawn from the words, “whereby their offences remain unpunished, &c.” and it is said, the offence in the present case cannot remain unpunished, because the party may be tried for it in Ireland; that is, that he may be tried in Ireland for an offence against the laws of England. I take the liberty of repeating what I asserted before, that the king’s peace is distinct in England, Scotland, and Ireland. That assertion is met by another, that the king’s

peace since the union is the same throughout his dominions. I apprehend, that the union has made no sort of alteration in the administration of our law. I conceive that the king’s peace in Ireland is protected by distinct judges, distinct magistrates, and distinct laws—the king’s peace in England and in Scotland, respectively, by judges, magistrates, and laws equally distinct and independent. If a man could be tried before a judge in Ireland for an assault in Westminster, the most unheard of chaos would be introduced, and a man would be tried by one law for the breach of another. I take it that the law stands as it did before the union, and before this act; and that if a man commits a breach of the peace, or an act tending to break the peace, he must be tried in the same manner as before the union; and a conviction, or acquittal for a publication of a libel in one country, cannot be pleaded in bar to an indictment for a publication of the same libel in the other. It is not so in the same country. If a man be indicted for his offence, the peace of that country, in which he is brought to trial, is vindicated throughout; and he cannot be tried again, except for a subsequent publication, which, in truth, would be a distinct offence. The offence of a libel springs from the publication. As long as a man absorbs his own venom, the law considers him sufficiently punished by being the receptacle of his own malevolence. But if at length, satiated from feeding upon his own malice, he disseminates his noxious poison to the public, if it be in Scotland, he is an offender against the laws of Scotland, and will be punished as such: if the publication be in Ireland, he is an offender against the law of Ireland, and will be punished as such: so if he publishes in England, he is to be punished as an offender against the law of England: and the law does not allow a man when called upon to answer in one of those three countries to take refuge from punishment in the multiplicity of his crimes; he is not permitted to say “I will not be tried here, or there, because in disturbing the peace of two other countries I have transgressed the laws of my own; you should be parsimonious in punishment, because I have been prolific in crime.” But supposing the several publications to be one offence and triable in either country, does it follow that the criminal should choose his own judge? Because he refuses to be tried where the accusation is made, must justice submissively wait upon him where she may not have the same means to vindicate herself? “you have indicted me in England where you have evidence to convict me, therefore I will not go there; but you may try me in Ireland where I am not indicted, and where possibly your evidence may not be equally strong.” But, my lord, upon this part of the case let us come to plain and manly language; Mr. Curran told you what he could effect by the magic of his eye;



that the author would be instantly acquitted if tried in his own country. If the author be in this land, let him come forward; let him raise his head to be seen, and justify his publication as the friend of the people; let him avow the fact; let him enable me to prove that he is the author of those letters, and I will throw myself upon the justice of an Irish jury and an Irish bench, I will not shrink from the trial of such a question in my own country. Who is he that uses those arguments? He is supposed to be an Irishman and a resident in this country; if so, he knew the falsehood of his calumny, at the moment he was accusing a member of this high court, of tarnishing his robes, and polluting the ermine which had been entrusted to him as a sacred deposit; and he preferred this accusation, not before an Irish public, where the integrity and character of the learned judge would have protected him from the coarse slander of his assailant, but before the tribunal of another country, where he could not have equal protection. This libeller, whoever he may be, dragged him to a distant court, without notice of trial, without process to bring in his witnesses, without letting him see the hand that held the accusation. Will such a man complain of being brought before the same tribunal to purge his abominations? but, let him avow himself, let him rest upon the merits of his publication, and I will try him at home. Yes, my lord, I feel it would be divine retribution, that as he tried an honest man where he was not known, he should himself be tried where he would not only have the charge of the accuser, but the whole weight of his own character to contend with. I should be influenced by more than ordinary zeal for his conviction, if I wished him to labour under more accumulated pressure. His character is not unknown to the law: he must be a man unchaste in his manners—embarrassed in his fortune—and profligate in his principles; the language may be my own, but the description is pretty accurately taken from lord Coke's report of the case "*de libellis famosus*."

But it is said, "I can have no witnesses, because I have no power to enforce their attendance." Who is it says so? The gentleman at present before you has made an affidavit; he states in it, distinctly, the fact with which he is accused, and does not deny it. He swears to an alibi, as his only protection, in a case in which an alibi is no legal defence. But if metaphysics are to be ransacked to extract a defence from such materials, let him go to the bar of the King's bench in England, and debate the matter there. But though another man may have cause to complain of the want of witnesses, the present defendant has none. He does not deny the charge: he does not say that he has any witnesses to examine, or that, if he has, he cannot procure their attendance; he does not distinctly say, that he has any evi-

dence to produce; his affidavit is modestly conceived in these words, "that *any evidence* which deponent could procure, relative to deponent's *hand-writing, conduct or character* do arise in the city of Dublin and not elsewhere, and that he hath no means whereby he could be certain of, or compel the attendance of witnesses in the city of London, necessary for his defence."

I shall not observe farther upon this affidavit than to remark that it does not qualify a man to embody in his cause the liberty of the country, and to call himself the champion of the people.

If there are imperfections in this act of parliament, they may be rectified; but are we to refuse obedience to an act, as long as it is capable of being amended? It will mortify the vanity of those who have been so loud in observing on the omission to provide bail, to tell them that the observation did not originate with them. I hope it may be remedied, but certainly not without some difficulty and consideration; but as to the empty declamation about the repeal of the Habeas Corpus act, it is idle and preposterous; and every act that makes an arrest lawful which was not so before, may be as well called a repeal of the Habeas Corpus act. It never was the intention of that act to discharge a person who was lawfully arrested; for the liberty of the subject does not depend upon freedom from arrest, but in having the cases clearly and distinctly defined, in which he may be liable to it. The defendant is not in custody under a warrant of commitment. Indicted of a crime in England, he will have the full benefit in that country of the Habeas Corpus act. He is offered the same advantages here, and he disclaims the favour; and yet in his progress to an English judge and an English jury, his situation is compared to that of an unfortunate prince who was hurried to Paris, and executed at midnight. It does not become counsel for the crown thus to anticipate his conviction, and I trust the eloquence of his advocate has hurried him beyond his own view of the subject.

You will recollect that by the stat. 10 Chas. 1st, a man guilty of an accessorial offence in England, the principal felony having been committed in Ireland, might be tried in the country where the principal felon was convicted; although the accessorial offence was committed in England: and from the hour of the enactment of this law to the present moment, no instance has occurred of any difficulty under the act, nor any question on the severity of the want of compulsory process to bring over witnesses. A criminal seldom relies upon the testimony of reluctant witnesses, whose attendance can only be had by the strength of legal process. But what is the case of a man whose defence depends upon hand writing? It must be known to his most intimate friends, and they are the persons who can most accurately depose to his con-



duct and character; and can he say he wants a compulsory process to prove such facts? It is evident, then, that all the severity which has been expatiated upon, is not to be found in this case; and all the defendant has to complain of is, the lenity and indulgence with which he has been hitherto treated. He has been cruelly deprived of the honourable character of a martyr, and left in the humble situation of a man accused of a crime, and unwilling to take his trial.

Whether the offence in this case be bailable or not, matters little upon this argument, but in 2 Hale, 133, it is said that where there is an indictment for a bailable offence, no bail can be taken before a plea to the indictment. Therefore, upon the whole of the case, I trust you will be of opinion that there has been no severity; that the defendant has had every indulgence and attention consistent with the due administration of justice; that under the words, "felons and other malefactors," all offences are included; that a libel is an atrocious offence; that you will disappoint the intention of the legislature, if the act be not carried into full operation; that a libeller is that description of person upon which the law was peculiarly called upon to attach; and that the amendments in the latter statutes, were intended to remedy the evil which the former were not sufficiently comprehensive to embrace.

It is said, that public justice may be satisfied without proceeding against the defendant; that a man residing in Ireland could not publish in England, without having assistants there. "Prosecute *them* in all directions, satisfy public justice, even to revenge; but let the author escape, whoever he may be." I can well conceive, my lord, that the author who committed the crime, never meant that, the punishment should extend to himself. But shall the angry law break the weapon in pieces, and let loose the hand which directed its execution? It would be as inconsistent with law as with public feeling to do so—to prosecute those who acted in obedience to the orders of the libeller, and yet suffer him to escape.

It has also been alleged that animadversion upon public subjects is a public right. Within certain bounds, I admit it. But no man is to make public discussion, a pretence for putting forth private malice and resentment. The honest feelings of individuals are not to be made the sport of every idle calumniator who seeks his own repose in the afflictions of others; if he disseminates poison, he must answer for the consequence, and may be asked, "who subjected the actions of honest and honourable men to such a tribunal as thou art? *Who made thee a ruler and a judge over us?* Cease thy iniquitous inquisition, judge not lest thou shouldst be judged." Such is the language of common sense, such is the language of the law. The slanderer should be delivered over to the punishment he deserves.—Thus will

you satisfy the law, and preserve the constitution; and, acting with even and unshaken hand, teach the body of the people this salutary lesson, that as the weakest man is strong when he is upheld by the law, so the strongest man is weak when he presumes to resist it.

[The arguments on both sides having closed here, the Court reserved its judgment for the following Thursday, Jan. 31.]

*Court of King's Bench, Dublin,*

*Thursday, January 31st.*

Mr. Justice Daly.—This case comes before the Court, upon the application of Mr Justice Johnson; who has been brought before us by virtue of a writ of Habeas Corpus, directed to a person who holds him in custody, and who has made a return to the writ. By that return it appears, that Mr. Justice Johnson stands indicted in the county of Middlesex, for publishing a libel upon his excellency the lord-lieutenant of Ireland, lord Redesdale, lord high chancellor of Ireland, and Mr. Justice Osborne, one of the judges of this court. It appears that upon this indictment lord Ellenborough, the chief justice of England, has issued a warrant for the apprehension of the prisoner, in the common form, and directed to the proper officer. It appears that this warrant has been carried over to Ireland, and has been endorsed by a magistrate of the county of Dublin; and, under the authority of that endorsement, the prisoner has been arrested in his house at Milltown, in the county of Dublin. From the moment that this warrant reached Ireland, and received the endorsement of a magistrate here, if it has any efficacy whatsoever, it derives it from an act passed in the last session of parliament, and from the 4th section of that act. [Here the learned judge stated the third and fourth sections.]

The prisoner has applied to this Court to be discharged, contending that his case is not within the purview of this law. It seems that this act of parliament is not a new conception of the legislature; its provisions appear to be taken from other acts of parliament passed in Great-Britain, to remedy the same inconveniences which this act is intended to remedy. To entitle us, therefore, to decide whether this application be well-founded, we are to see, in the first place, how the law stood before the first of these acts were made; secondly, what were the mischiefs intended to be remedied thereby; and thirdly, we are, if we can do so by fair construction of the law, to give it such an interpretation, as to make the remedy co-extensive with the mischiefs.

First, as to how stood the law before the 23rd Geo. 2nd, chap. 16, was made. Before that law was enacted, an important defect in



the administration of criminal justice pervaded England; no person could be seized under the ordinary process of justice, except within the local jurisdiction which had cognizance of his crime. This was a defect, so far as it concerned the ordinary process of law, co-extensive with every crime, capital or otherwise, within the cognizance of English jurisprudence. There was, indeed, an extraordinary mode of aiding the administration of justice; namely, arrests *per mandatum Regis*; usually exercised by issuing the warrant of the secretary of state. But this was a remedy far from being co-extensive with the mischief, because it could only be obtained in one part of the kingdom; and, what is material to the present argument, it could only be obtained in capital cases; and even in those cases to which it was applicable, it could seldom be obtained with that celerity which justice required. It was then with regard to capital cases an insufficient remedy; all other cases were utterly without any remedy whatsoever. The defect then was a defect pervading the general administration of criminal justice in England, there being an inadequate remedy in capital cases, and cases of an inferior description being utterly unprovided for. It is natural to imagine, that when the legislature provided a remedy, it intended that remedy should be co-extensive with the mischief; and those acts of parliament must receive such a construction, if it be possible for fair interpretation to give it to them. Upon looking into those acts of parliament (I mean those which preceded the present act) I cannot have a doubt upon my mind that it was their intention to forward and make effectual the administration of justice upon every crime, great and small, to be found within the limits of English jurisprudence.

The first of these statutes is the 23rd Geo. 2nd, chap. 16. What does it say? That if any person against whom a legal warrant shall be issued, shall escape or go into another jurisdiction, it shall be lawful for the magistrate to endorse, &c.; the words are general, they are applicable to every case on which a warrant can issue, that is, every crime; and indeed it is not on the part of the application contended, that this act of parliament is confined to any distinct class of crimes. The next is the 24th Geo. 2nd, chap. 55, which gives the remedy against such persons as shall reside or be within the foreign jurisdiction, before warrant granted, without escaping or going out of the jurisdiction where the crime was committed, after warrant granted. This act is co-extensive with the former act as to crime.

The next act of parliament which I shall notice is the 13th of the present reign, of which, so far as that law goes to regulate between country and country, the present act is nearly a transcript; and after examining the scope of both those laws, I draw this broad conclusion, that it was the intention of both

acts to put each of the three distinct parts of the United Kingdom in the same state with respect to each other, in which the several counties of England had before been placed with respect to each other, for the advancement of criminal justice; and my reasons for thinking so are these:

First, the mischief was the same, a defect in the general administration of justice, applicable to every crime so far as concerned the ordinary administration of justice; an inadequate remedy existing here, as it did between county and county, in capital cases, namely, a state warrant, but no remedy whatsoever for inferior offences; the defect arose precisely from the same source, it was simply a defect of jurisdiction with an inadequate provision as to cases capital, but no provision whatsoever as to inferior offences; and it is fair to suppose, that the legislature, in framing the act now before us, intended that the remedy should be co-extensive with the mischief; and we are bound to give it that extensive operation, if we can do so by fair interpretation. [Here the learned judge stated such parts of the act as are material.] Can words be found in the English language more comprehensive than those which I have now read? If any person against whom a warrant shall issue for any crime or offence against the laws of England, shall escape, go into, reside, or be in any place in Ireland, it shall and may be lawful, &c. Can words more plainly include every species of offence to be found within the limits of English jurisprudence? Indeed it seems to be admitted in argument by the counsel for the prisoner, that if we are to interpret this law, without reference to any thing but what is to be found within the enacting part of it, it must receive the construction contended for on the part of the crown. But several objections have been taken to this construction, upon grounds which I shall state as I go along, and which I think have been fully refuted by the counsel for the crown. The first objection is founded on the word "escape," which is to be found in the title and the preamble of the act; and it is contended that the scope of the act is confined to persons who having been personally within a jurisdiction, have committed crimes there, and escaped therefrom; that this is to be gathered from the title and the preamble so worded, and that the enacting part is to be controlled by them, however plain and obvious the words of the enacting part may be. But if this be a rule for the interpretation of an act of parliament, I have heard it for the first time in this argument. I hold the true rule to be, that where the enacting part of a law is obscure or doubtful, it may receive explanation from the preamble, from the title, or even from external circumstances; but where the words, as here, are plain and obvious, they cannot be controlled in their operation by any other circumstance. What



are the words? "if any person shall escape, go into, reside, or be, in any place of that part of the United Kingdom called Ireland;" if the scope of this act of parliament be to make the remedy co-extensive with the mischief, I defy the ingenuity of man to find other words which can satisfy that intent so plainly and clearly as those words do. The mischief was a defect of ordinary process extending to every crime; what is the natural remedy? An effectual process, extending the same length. If then, a crime may be committed in a jurisdiction, within which the criminal never set his foot, and who yet may be the sole perpetrator of the crime, I ask, can the intent of the act of parliament be satisfied by the construction contended for by the counsel for the prisoner? But it is clear that the most enormous crimes may be committed in this manner. Poison may be conveyed in this manner through an innocent medium, and life may be destroyed by that poison in a place where the murderer never set his foot. Poison to the mind may be so conveyed, as well as poison to the body; and the most innocent and respectable characters may be blasted in places which the calumniator never saw. The most extensive mischiefs may be brought upon the public in this manner; tumults and disturbances may be excited by publications, in places where the name and the person of the author of such publications were alike unknown. If then the construction contended for by the prisoner's counsel be adopted, we exclude from the provisions of this important law, crimes of the most enormous complexion, and the most mischievous tendency, if perpetrated in a particular way; and we do so by rejecting the natural meaning of words, and interpreting them in a forced and unnatural manner.

The next objection is, that this act of parliament extends only to cases of felony, and does not include what the counsel for the defendant call minor offences, and that therefore the offence of libel is not comprehended within it. They who make this objection admit that the words of the act of parliament may be interpreted, by fair construction, to extend to every species of crime. But they say, that if it be construed to extend to any misdemeanor, it must be construed to extend to all; and if it be so construed, then it will operate to repeal an important clause in the Habeas Corpus act by a side wind. The clause they allude to, is the 12th clause in the English Habeas Corpus law, which prohibits the sending any subject of England out of the realm of England into foreign places. But the legislature has in this act of parliament spoken plainly and clearly; it intends to remedy a defect of the utmost magnitude in the administration of justice, a defect most glaring in minor offences, for before this act passed, minor offences were utterly without remedy; but it was otherwise with respect

to capital offences, for capital offenders might be transmitted by a state warrant without the aid of this act from one country to the other, and I believe no instance can be stated in which such a warrant was refused. If then the construction contended for by the prisoner's counsel be adopted, it will render the act in a great measure unoperative, indeed almost a dead letter; for their construction confines it to cases where it is scarcely requisite, and withdraws it from those which stand completely in need of it. No doubt it does vary in some degree, so far as relates to Great Britain, that clause in the Habeas Corpus law; but the language it uses is so clear and explicit, that it is impossible to mistake it. The legislature also seems to have maturely weighed the benefits to be derived from that breach of the Habeas Corpus law, against the mischiefs which would have existed were it to have remained unvaried. It cannot be forgotten that when the English Habeas Corpus law was enacted, Ireland had not the benefit of the Habeas Corpus law; the grievance then was, that persons might be removed by the authority of the crown from England, where the subject could have the benefits of the Habeas Corpus act, into Ireland, or other places, where he had no such protection, and there might be illegally detained—for the words of the act are for preventing illegal imprisonments beyond the seas. But the reason for retaining that clause is now completely removed so far as relates to Ireland; for this country has the benefit of the Habeas Corpus act, and were the government of England to take advantage of this variation, and send a person in custody to Ireland, if the imprisonment were illegal, he would be relieved by the Irish Habeas Corpus act; and the legislature has, in my mind, by this act of parliament, promoted the due administration of justice without infringing at all upon the liberty of the subject.

In support of this objection too an attempt is made to force the term "malefactor" from its general meaning to confine it to a particular class of offences; its general meaning is obvious to every one; it comprehends all evil-doers, and the act of parliament evidently uses it as a general term, including all offenders not comprehended in the word felons; this is the plain and obvious construction of the word malefactor, and it is likewise that construction which renders the operation of the act of parliament complete. But it is said, that the term malefactor was introduced for Scotland in order to include offences there of the same description with felony, felony being a term unknown in that law. If that were the case, would the legislature have used a general term, comprehending all offences, and not have made use of terms descriptive of the particular offences meant to be included? Such terms must of course exist in the Scottish law; no person pretends that malefactor in its vernacular sense, has



not the same meaning in Scotland that it has elsewhere; so that if this construction be adopted, malefactor, which is inoperative here, and not permitted to have any meaning, will in Scotland, where it is to operate, include all offences whatever; and thus the same law couched in the same words, will have a different meaning in one part of the United Kingdom from that which it has in the other.

It is also said, strike out the words "escape" and "go into," and the act will bear the meaning contended for by the crown; but to this it was well answered, that if it were not intended to attach upon persons who can commit crimes in places where they had never been, the two first words, "escape and go into," would be sufficient to satisfy the act; for how could a man in such circumstances, come under it, unless he escaped and went into Ireland? therefore the two last words must be operative and independent of the others; and if you strike out the words "reside and be," you diminish the operation of the act. But then it is said, strike out the words, "escape" and "go into," and then the other words will fully contain the meaning contended for by the crown; this is admitted, but if you strike out any, strike out those which are least operative, and in which the others merge.

But another construction is attempted, the four descriptions are suffered to remain; the two first are applied to the person, the two last to the place; but if that be the true construction then the two last descriptions, "reside and be," are introduced for a most notable purpose indeed; they are brought in as a sort of finger-post to the officer, intimating to him, that he is to execute his warrant upon the criminal, in the place only where he happens to be. In short, I have not heard a single construction of this act of parliament, except that which gives it full and complete operation, which is not constrained, unnatural, and bordering upon absurdity.

Another argument is, that the construction contended for on the part of the crown, makes this act of parliament a law *ex post facto* as to crime; but supposing it were clearly so, still if an *ex post facto* law be enacted by the legislature, it must be obeyed; but in fact it is no such thing; it is neither prospective nor retrospective as to crime; it has not added a single crime to the criminal code, but it is clearly prospective as to that on which it is intended to operate—regulation of process and administration of justice.

Another objection is, that it appears by the affidavit of the prisoner, that he has been a length of time out of England; that from a period previous to the publication of the libel down to the present moment, he has constantly resided in Ireland; and therefore it is said, that supposing him to have procured the libel to be published in England, he is not within the jurisdiction of the English law. And to give additional weight to this argu-

ment, it is said, that there is not necessarily a failure of justice; that the crime need not remain unpunished, for he is liable to a prosecution in Ireland; and, farther, it has been broadly laid down, that if a person procures a libel to be published in England through a medium which he knows will circulate through every part of the empire, if such person be prosecuted for the publishing, we will suppose in England, and convicted, he can never be tried again in any other part of the empire, unless he does some new act amounting to a republication. With respect to the prisoner's absence from England, if that forms a valid objection to the jurisdiction of that country, the prisoner will have the benefit of it at the bar of the English court; but I deny the position to be law, and I state this to be law, without fear of contradiction, that if any subject of the king be a trespasser against his majesty's peace, within any particular jurisdiction of his united kingdom, whether he be so in his own person, or through the medium of others, he is answerable for the breach of that peace to that particular jurisdiction, whenever he can be found there. I do not recognize the distinction which has been taken at the bar, between a subject of the law and a subject of the crown. As a subject of the crown, he is bound not to infringe the laws of any part of the United Kingdom, let him reside where he will; in treason it is admitted he cannot, and for my own part I cannot see the distinction as to this point between treason and any other crime, except in the degree of offence and the punishment annexed to it. The duty of obedience to every law, from high treason to the most petty offence, flows from the same source—the duty which the subject owes to his sovereign.

But it is said that he may be tried here; no doubt he may, if there be evidence to convict him; but is it common sense to say, that a conviction for infringing the law in the county of Dublin will make satisfaction for a similar offence in the county of Middlesex? and is it not monstrous, that he who is charged with a particular crime in Middlesex, shall be permitted to say—"you have it in your power to charge me with a similar offence in the county of Dublin, and, therefore, you shall try me in Dublin, and not in Middlesex; the extension of the crime with which I am charged, gives me the privilege of choosing my own tribunal, and it is natural for me to fix upon that where I have the best chance of escaping conviction?"

Upon the whole of this case, I am of opinion, that the natural and obvious construction of this act of parliament is that which is contended for on the part of the crown. It is that construction alone which can give it due operation, and make it a complete remedy for the defects which existed before it became a law; and my opinion therefore is, that the prisoner's case comes within it, and that he is not entitled to be discharged.



Mr. Justice Day.—It must be admitted that the present question, in whatever point of view it be taken, is one of the most vital importance. On the one hand it concerns most essentially the liberty of every subject in the United Kingdom from the highest to the lowest; on the other hand, the acknowledged object of the statute before us is, *ne maleficia remaneant impunita*. On the one hand occurs a question which touches the most precious birth-right of a British subject; on the other, an object of great public utility. And, therefore, while I readily admit *in limine* that it is our duty so to interpret the statute as shall best repress the mischief and advance the remedy, I claim it to be conceded to me that the Court in its construction is bound to keep steadily in view, as its polar star, the principles of civil liberty, and not to push or strain a construction which may trench thereupon an iota beyond the strict necessity of the case.

In construing this statute I shall adopt the course pursued by my brother Daly, and consider, 1. How the law stood before the passing of the act. 2. What was the mischief which the law had not at all, or had but imperfectly provided for. And 3. It will then be my duty so to construe the statute as to make the remedy co-extensive with the mischief.

1. At common law there was no power in the state but parliament that had a right to send any subject out of the realm against his will. It resulted as a natural and necessary corollary from personal liberty, that every British subject had a right to remain in his own country till driven from it by the sentence of the law. The great charter accordingly declared (for it is but a declaration of the common law) that “*nullus liber homo capiatur vel imprisonetur — aut exuletur nisi per iudicium parium vel per legem terræ.*” And lord Coke’s comment upon *Exuletur* (2 Inst. 47.) is in these words:—“This is a beneficial law and is construed benignly; and, therefore, the king cannot send a subject of England against his will to serve him out of the realm; and not even to Ireland to serve him as deputy.” And give me leave to add, nor could he be sent out of Ireland into England against his will; for as wide as the king’s dominions extend (save only Scotland) so wide is the dominion of the common law.

But though the law was thus clearly and unquestionably established in the point, it became necessary in consequence of the arbitrary practices of the house of Stuart to reassert it in this as well as in other important particulars touching the liberty of the subject, and to throw up fresh fences and new lines of protection around it. Accordingly in the great Habeas Corpus act of England (31 Car. 2nd, c. 12) we find that important right of the subject insisted upon with a jealous and an ardent anxiety, and as it were consecrated to all futurity in the following words: “And for pre-

venting illegal imprisonments beyond seas, be it enacted that no subject of this realm shall or may be sent prisoner into Scotland, Ireland, or any place beyond seas; and that every such imprisonment is hereby enacted and adjudged [i. e. declared] to be illegal”—under the heaviest penalties that I know inflicted by any existing statute short of death. That statute however provides (s. 16,) “that if at any time any person residing in this realm shall have committed any capital offence in Scotland or Ireland, or any of the plantations where he ought to be tried for this offence, such person may be sent to such place to receive such trial; in such manner as the same might have been used before the making of this act.”

This latter clause we see recognizes a practice theretofore in use of transmitting capital prisoners to be tried in Ireland; a practice stated by the attorney-general to have originated in the prerogative, but which I rather hold to have been a wholesome encroachment upon the common law. Mr. Justice Blackstone lays it down broadly and without qualification, “that no power on earth except the authority of parliament can send any subject of England” [and give me leave again to add any subject of Ireland] “out of the land against his will; no, not even a criminal.” (1 Comm. 137) But this I hold to be more curious at this day, than necessary to the present discussion; because even at that period of just jealousy of the crown and noble ardour for the liberty of the subject, it was thought expedient to legalize the transmittal of capital offenders from England for trial to the scene of their crimes. And upon that law we find the King’s-bench of England have repeatedly acted. 2 Ventr. 314; Stra. 848; Fitzgib. 111, S. C.

In Ireland the common law remained unaltered by any express provision; and it is remarkable that when the Habeas Corpus act was obtained in Ireland in 1782, the whole of that important provision “for preventing illegal imprisonment beyond seas,” was most unaccountably omitted. I say *unaccountably*; because if a confidence in the house of Brunswick were (as suggested from the bar) the cause of this omission, the generous love of freedom which has hitherto characterized that house would have furnished an equal argument against abridging any of the provisions of that other Magna Charta. However a reciprocal practice of transmittals in capital cases obtained here, if not springing from the prerogative, yet sanctioned by that salutary provision of the English Habeas Corpus act, by the *comitas gentium* which has established the practice among all civilized states, though utterly unconnected, and by sound and substantial policy; a practice analogous to that of back-warrants between county and county which had long obtained in Ireland before this statute, and so settled amongst us that it is actually recognized as the law of Ireland by 8 G. 1st, c. 9, a temporary Irish statute since made perpetual.



2. Such then was the state of the law in the present point at the time of the Union. The interests of the two islands becoming altogether identified by that measure, and it being material to create a co-operation between them in the administration of criminal justice, the common legislature conceived that it resulted from and was conformable to their reciprocal obligations, and common interest, to provide that neither island should continue an asylum for the *fugitives* of the other. That policy had already been long acted upon as between county and county in England, and afterwards as between England and Scotland, and no doubt the wholesome effects thereof had been thoroughly proved and felt [See 5 Edw. 3rd, c. 11; the 23 Geo. 2nd, c. 26; and 24 Geo. 2nd, c. 55; and see 13 Geo. 3rd, c. 31, Brit.]. The case of *capital* offenders we have seen had already been provided for, I will not say in the most constitutional manner, or with sufficient regard to the rights and accommodation of the prisoner; but I join Mr. Attorney-general in challenging universal experience to say whether a single instance was ever known of a person *capitally* transgressing in one island, and daring with impunity to show his head and go at large in the other. I cannot, therefore, concur with the counsel for the prisoner in limiting the operation of any part of this statute to *capital* offenders. Their case was not the mischief which *pressed* itself upon the attention of the legislature; because the secretary of state's warrant had been found in *capital* cases to answer sufficiently the purposes of the crown; and on the part of the subject no complaint had been made of any oppressive exercise of that process in such cases. The real and urgent mischief was, that an offender who might commit a dangerous or malignant misdemeanor (suppose a seditious conspiracy or a traitorous and foul libel), or perhaps a very criminal clergyable felony (as a larceny to a great amount) in one country, was sure, by withdrawing himself into the other, to brave and set at defiance all pursuit or prosecution. He was out of the legal jurisdiction; he was beyond the reach of any known process; and he enjoyed, in unmolested security, the fruits as well as the infamy of his crime. The mischief is clearly and distinctly recited in the preamble to the third section of this statute: "Whereas it may often happen that felons and other malefactors make their *escape* from one island into the other *whereby their offences remain unpunished*." Now it is a maxim in law, that the preamble of a statute must be taken to be true. Try then the question by that test, and it will be found that the view of the legislature in that preamble could not have been confined to the escape of *capital* offenders only, because it would not be true to say that *capital* offences thereby remained unpunished. "Felons and other malefactors" are terms as comprehensive as the English vocabulary can furnish, to express all degrees of offenders from the

most trivial trespass up to the most disastrous treason. The legal import of "malefactor," is *offender*, in its most general sense; but here it is used to import specifically a *trespasser*, because every malefactor other than felon can be but a trespasser. I remember in the first argument of this case at my lord's house we were referred by the prisoner's counsel to the *statutum de malefactoribus in parvis*\* to prove that the legislature invariably apply the word "malefactor," to one guilty of the *majora crimina*. But upon reference to that statute, and to another of the same reign (1 Westm. c. 20.) it will be found that "malefactor" in the one, and its Norman synonyme "*meffesor*" in the other are used in the limited sense of trespasser, and are so translated in every edition of the statutes. So also lord Hale (2 P. C. 136, 140) uses the word "malefactor" repeatedly to signify a trespasser or *bailable* offender. But the flippant answer to all this is, that the language and the laws of our English Justinian are become obsolete, and an appeal is made in a court of law, from the authority of Hale to that of South, of Roscommon and of Shakespeare!—But, if a doubt can still remain, look at the preamble of the fourth section which refers to the antecedent, and is but an abstract of it, and you will find, for "felons and other malefactors," a language of the most comprehensive and unequivocal import substituted: "and, for remedy of the like inconveniency, by the escape into Ireland of *persons guilty of crimes* in Great Britain, be it enacted," &c.—The statute then proceeds to enact, in both clauses, in the same general and comprehensive language: "for remedy whereof, be it enacted, that if any person, against whom a warrant shall be issued for *any crime or offence* against the laws of Ireland, shall escape, &c. into Great Britain," or *vice versa*.

I feel that much time has been wasted in ascertaining the mischief in contemplation of the legislature as between the two islands; it floats upon the very surface of both those clauses, and the mere reading of them must satisfy any direct and unsophisticated understanding, that this reciprocity of process is not meant to be limited to any particular degree or order of offence. And I cannot but regret, that counsel for the prisoner should dilute, with such a milk-and-water argument, a case too strong to stand in need of sophistry or forced and unnatural construction.—The rest of Mr. Johnson's powerful and impressive argument might disdain to borrow aid from so feeble an associate. For myself, I have no doubt, upon a combined view of the title of the statute, the preambles of the third and fourth clauses which recite the mischief, the body of those two clauses which reciprocates the remedy, and the reason and policy which called for them, that the grievance felt by the legislature was the escape of *offenders* gene-

\* 21 Edw. 1st.



rally (whether "felons or other malefactors," whether high or low in the scale of offences) from the jurisdiction wherein they transgressed, and who thus eluded justice. The statute, by new and constitutional regulations, facilitates the arrest and transmittal of *capital* offenders, who were before liable to both. It takes them out of the hands of the secretary of state and a king's messenger, whose authority had been warmly questioned in an early period of this reign, and who might detain their prisoner till it suited their own convenience that he should travel: It puts him into the hands of the known ministers of the law, the justice of the peace and the constable, who are commanded to transmit him *forthwith*: And it extends, for the first time, the process to clergyable felonies and misdemeanors.

But it is objected for the prisoner, that had the legislature meant to include bailable offences within the operation of that part of the statute, they would have provided means for bailing the offender in the island to which he had escaped; and the rather, as the subject of bail was so immediately before their eyes. The legislature (say his counsel) have studiously and accurately provided in the case of bailable offences, as between county and county: and is it to be imagined, in a case of infinitely greater hardship, as between island and island, that they would not have acted with the same tender and constitutional concern for the rights and convenience of the subject, had not bailable offences been utterly excluded from their contemplation? To this I answer, by admitting at once that such provision could not have been accidentally omitted. It was impossible, where bail was so carefully provided in the same statute, in a case wherein the inconvenience and hazard of the sea did not exist, where that same law had been acted upon upwards of thirty years between England and Scotland without amendment or complaint, it is impossible that such omission could have been by accident or *ex improviso*. But, instead of subscribing to those eloquent but misplaced effusions upon the liberty of the subject and the rights of man, which enlivened this dull and dry argument, or instead of inferring from such omission, a construction militating with the letter, spirit, policy, and clear meaning of the statute, I draw from it a powerful, and, in my mind, an unanswerable argument, to prove, that escape is of the essence, and forms an indispensable ingredient in the composition of every case to bring it within the statute. I would not, of course, be understood to use the words escape and fugitive in their strict and legal meaning as if an escape had been effected from prison or arrest, or a catchpole were at the party's heels. I apply the words in a more enlarged and general sense, to all who, by withdrawing from the jurisdiction of their offences, decline to render themselves amenable to justice. It is observable, that the very

title of the statute presumes guilt in the objects of it; it is, to render more easy the arrest, not of persons charged with offences, but of offenders who escape; thus inferring, as the law warrants, actual guilt from the flight. Flight, or an escape from arrest for felony, is an acknowledgment of guilt; and, though the prisoner be acquitted of the principal felony, he shall forfeit his goods and chattels, if the jury find that he fled. Now, though flight to avoid arrest for a misdemeanor, be not attended with such extreme consequences, still the principle is the same; every man, who is accused, is bound to submit himself to the judgment of the law; and, whether it be a trespass, or whether it be a felony with which he is charged, it may, with truth, be said of him who shrinks from trial—*facinus fatetur qui judicium fugit*. I consider a person who is arrested after escape, *quasi* in execution. Public justice demands his presence where only he is responsible, and the charge can be investigated; and, if it be easy under this statute to imagine a case of hardship, it should be recollected, that the party has no right to complain of a hardship, the legal consequence of his own criminal conduct. If it be a bed of thorns upon which he reclines, it is a bed of his own making. Thus, then, concurring as I do with the rest of the Court, that bailable offences, no less than felonies, are within the mischief of the statute, if we apply it to the case of one who never was in the country where the crime was committed, who never could have fled, escaped, or migrated from it, who is to be found at his post, ready to meet his accuser, who is amenable to process, trial, and punishment for his offences, where by law he is responsible,—if we apply the statute to such a case, we impute to the legislature a wanton and outrageous violation of the most sacred birthright of a British subject—we charge them with having, not accidentally but by design and premeditation, stript the subject of his common law right of bail, in bailable cases, guaranteed and vainly hoped to have been perpetuated to him by the Habeas Corpus act. Whereas, if you limit its operation to such as withdraw from the country where they committed the crime, and thus elude the punishment which justice and the public interest demand, you vindicate the statute, and its author, for the omission of bail in the second part of it, and show that he acted in strict conformity to the principles of the criminal law, and of the constitution.

3. I now come to the construction of the statute which enacts the remedy; though I feel that much of this has been anticipated under the two preceding heads of my argument. The act is compounded of three British statutes, and consists of two parts: the first part establishing a co-operation by criminal process between county and county in Ireland analogous to the already existing statute law of England; the second establishing the like between island and island, such as has



obtained for many years between England and Scotland; and both purporting to bring to justice such offenders as, by quitting the scene of their guilt, would "remain unpunished." As far as the title of the statute may have any weight, nothing can be more expressive of the object:—"An act to render more easy the apprehending and bringing to trial offenders *escaping* from one part of the United Kingdom to the other, and also from one county to another." Then comes the preamble to the first part which is confined to counties;—"Whereas it frequently happens, that persons against whom warrants are granted by justices of peace in Ireland *escape* into other counties out of their jurisdiction; and it may also happen that persons having committed offences *in* some county in Ireland may reside or be in some other county out of the jurisdiction *in* which such offence was committed, whereby such offenders may easily avoid being punished." This preamble plainly refers to two different kinds of *escape*: the one *after* warrant granted, and to elude it, which is the limited legal sense of *escape*—the other, a withdrawing out of the county *before* any warrant issued, and even without any direct purpose of avoiding a prosecution, which in a colloquial sense would also be an *escape*. That such is the true construction of this preamble will appear by reference to the two British statutes from which this first part of the act is taken. The first is a single clause of 23 G. 2, c. 26, s. 11, which enacted, "that in case any person against whom a legal warrant shall be issued shall *escape or go* into any other county out of the jurisdiction of the justice granting such warrant, it shall be lawful for any justice of any county to which such person shall have *gone or escaped* to endorse such warrant, and to cause the person against whom the same shall have been issued to be apprehended and sent to the justice who granted the warrant, or to some other justice of the county from whence such person shall have *gone or escaped*." This clause among other defects was soon found to have reached but half the mischief, namely the case of persons escaping out of the county *after* warrant issued. The legislature, therefore, in the following session, amended the clause by the 24 G. 2, c. 55, which recites that whole clause, and adds, "And whereas such offender may *reside or be* in some other county out of the jurisdiction of the justice granting such warrant *before* the granting the same, and without *escaping or going out* of the county *after* such warrant granted." And then the statute proceeds to rectify that omission in the very words of the act before us, by adding in the enacting part, those words, "reside or be," to the former words, "escape, or go into," used in the 23 G. 2. It is plain then, considering what the defect was which the 24 G. 2 professed to amend, that those words, "reside or be," were introduced to meet that *casus improvisus*; to provide for the case of a person

who might withdraw from the county where he committed the crime, and "reside or be" in another *before* any warrant granted against him.

Thus, then, *reddendo singula singulis*, the purview of this part of our statute may be fairly paraphrased as follows; "Be it enacted that in case any person (*having committed an offence in any county in Ireland*) against whom a warrant shall be issued by any justice of the said county shall (*after* such warrant issued) escape or go into, or (*before* the granting such warrant) reside or be in any other county, it shall be lawful for any justice of the county where such person shall escape, go into, reside, or be, to endorse his name on such warrant," &c. This in my judgment is the natural and plain interpretation of the clause, commensurate precisely with and going the full length of the mischief, and one not open to some strong objections urged against other constructions. The plain object of this part of the act is, to render amenable to justice, men who by quitting the scene of their crime, whether before or after warrant issued, and shifting into another jurisdiction, would "remain unpunished." 2 Hawk. 183, 6th edit.

But when we come to the second part of the statute regulating the co-operation between island and island, it would seem as if the legislature had narrowed somewhat their view as to the mischief to be remedied. The only mischief recited in the third section, is the eluding punishment by *escape*; every other migration from the one island to the other, which had been with a minute precision recited as from one county to another in the preamble to the first part of the statute, is in this preamble omitted, or rather dropt. "And whereas felons and other malefactors may *make their escape* from one island to the other whereby their offences remain unpunished, there being no sufficient provision for apprehending *such* offenders and transmitting them into the island *in* which their offences were committed; for remedy whereof, &c." And lest any doubt should remain that such was the mischief, and such alone, which the legislature had it in contemplation as between island and island to remedy, the fourth section recites that mischief in still more pointed terms: "And for remedy of the *like* inconvenience by the *escape* into Ireland of persons guilty of crimes in Great Britain." The obvious motive to this variation of expression was, that the legislature meant to confine that part of the statute which regulates between the two islands strictly to escapes made (whether before or after warrant issued) for the purpose of eluding justice. Now the consequence of such narrowed construction of this part will be, that, as between island and island, minor and trivial trespasses will in effect be shut out from the sphere and scope of the statute, and none will fall within its *practical* operation, but offences of an higher order. Government



it cannot be feared will interfere but in cases which concern the state, or in the *majora crimina*; and as to those paltry misdemeanors and mere personal injuries, which have so excited the sensibility and alarm of counsel, is it to be seriously apprehended that an offender to shun the event of such a prosecution would "escape" or "go and reside" beyond sea? or if he did that a prosecutor would for a petty vengeance incur the expense and inconvenience of bringing him back? Such appears to have been Ruffhead's construction of the 13th, Geo. 3rd, c. 31, from which the second part of our statute is taken; and I cannot concur in the reflection cast upon his marginal abstract of that statute, referred to from the bar not as legislative authority but as the opinion (*valeat quantum*) of an editor, who from his learned preface, and his numerous and useful references to the reporters appears to have possessed extensive erudition, and to have been deeply versed in the statute law of England. But what closes in my mind all question upon this point, is the following passage to be found in the later edition of Blackstone's Commentaries—a work not more distinguished for its lucid order and classic elegance, than as an authority in all legal and constitutional questions. After touching upon back-warrants which had long prevailed in England (and we know also in Ireland) without law, and referring to the two British statutes of Geo. 2nd, which legalized them, the learned commentator thus concludes: "And now by statute 13th, Geo. 3rd, c. 31, any warrant for apprehending an English offender who may have *escaped* into Scotland, and *vice versa*, may be endorsed and executed by the local magistrates, and the offender conveyed *back* to that part of the United Kingdom in which such offence was committed." 4 Comm. 292.

I confess those imperfections in the second part of the statute do not strike my short sight, which are relied on with such confidence on the one hand, which with such unjust facility are conceded on the other, and in which counsel on both sides find such convenient refuge from the objections urged against their respective constructions of the statute. It probably would be more to be desired than practicable to establish a reciprocal power of bailing between three countries differing so essentially in their laws; but supposing no such difficulty to exist, I hold the statute (which was introduced by a lawyer high in office and eminent in character at the English bar), to have been as well and maturely considered in its provisions, as it is salutary and politic in its principle. It has been in both its parts the law of the land in Great Britain for many years; it has there stood the test of long experience; and it was reserved for the sagacity displayed through the present case to discover all its imperfections!

But the counsel for the crown contend that

this construction is too narrow: and that the body of the statute (which is not to be controlled by the preamble) is large enough to embrace not only all fugitive offenders, but another class of offenders, namely, all such as by a constructive presence transgress in one island while they reside in the other. "Be it enacted that if any person against whom a warrant shall be issued for any crime against the laws of Ireland shall *escape, go into, reside or be* in Great Britain, it shall be lawful for any magistrate of the place in Great Britain where such person shall *escape, go into, reside or be*, to endorse such warrant, &c." And, in support of this construction, it is asserted, that this latter class of offenders would escape unpunished, if not included within the operation of the present statute.

To this extended construction several strong objections rush upon the mind. It is very true that the body or purview of a statute shall not be narrowed by a preamble, because the purview may (and often does) remedy the mischief, and do more; but it is no less true that where any doubt exists of the true meaning of the purview, the preamble is a safe and sure key to it. In the King v. Cartwright, 4, T. R. 490, the defendant was indicted for an assault upon a revenue officer, under the 9th Geo. 2nd, c. 35, s. 26, which enacts, "that for the more impartial trial of any indictment found for an assault committed upon a revenue officer, every such offence may be tried in any county in England." The defendant was found guilty on the count which stated the offence to have been committed in Surrey on the prosecutor, whom it described to be a revenue officer, and the venue was laid in Middlesex. On motion to arrest the judgment it was argued that the statute, though the words were general, was meant to extend only to assaults on officers in *the execution of their office*. And the Court were all of that opinion, and that "*the mischiefs from a contrary determination would be intolerable.*" And Mr. Justice Buller, that acute and truly learned judge, did not disdain to refer to the title, as well as to other parts of the statute, to collect the intention of the legislature, and limit the generality of the enacting part.—The 15th and 16th Geo. 3rd (called the Whiteboy act) has been well referred to, on this point, from the bar. It enacts "that if any person shall between sunset and sunrise maliciously assault or injure the habitation, property, goods, or chattels of any other person, &c. he shall suffer death, &c." This clause, which if construed in the latitude which the words plainly warrant would be worthy only of Draco, has always upon reference to the judges been controlled by the title and preamble, and held applicable only to insurgents, and the tumultuous risings described in that preamble.—With respect to Robinson's case, cited by the attorney-general from 2 East, the doctrine laid down there cannot be disputed. But I confess I did not



expect to hear that case likened to the present; a case, in which the language was plain and the provisions obvious, compared to one so doubtful that three judges have held one way, three more have held the contrary, and the seventh has hesitated.

The attorney-general candidly admitted that his construction renders altogether inoperative and utterly extinguishes the words "escape," "go into," and "reside;" and he will not deny that such construction ought to be preferred which gives full operation to every word. For there is not a more established rule of law and of common sense in the interpretation of a statute, than that no clause, sentence, or *word*, shall be superfluous, void, or insignificant, if by any other interpretation they may be made useful or pertinent, (1 Show. 108). By the construction which I submit, I have endeavoured to show that the preamble and the purview, the mischief and the remedy, are precisely commensurate, and every word in the statute is assigned a special operative meaning. But if the statute be extended to men who never visited the island in which the offence was committed, it will follow that the last of those four words "escape, go into, reside or be," would satisfy the statute; and the other three,—all very operative words, particularly the word "escape," which the legislature with a fond preference puts forward in the advanced ground of the statute, in the title, and all the preambles,—have been introduced for no purpose but to swell the train of the monosyllable "be" or only to be expunged. I am very ready to admit, that a crime may be committed, in one county or island, by a person, while he resides or happens to be in another; for instance, if a man in Dublin send a libel to Cork or London to be published, the publication is his act in Cork or London. But, that such an offender would remain unpunished, without the assistance of this statute, is a proposition which I confidently deny; because (to recur to the same instance) it would be impossible to transmit a libel from this to London, by any imaginable means, which would not amount in law to a previous publication of it in Dublin. The bare delivery of a libel to a messenger or letter-carrier, the dropping it in the Post-office, addressed even to the object of it, who would naturally conceal and not circulate a libel upon himself, any spontaneous emanation of a libel, however limited and circumscribed, amounts to a publication; and such publisher would be answerable to justice, in the jurisdiction where such inchoate act was done,\* no less than in the other county or island where the libel issued from the press, and the publication became consummated, (5 Co. 126, a; 12 Co. 35, b; 1 Hawk. c. 73, s. 11; 5 Mod. 167).—The offence of sending and delivering

threatening letters seems to come within the same rule and principle of law.—The other instances, by which this proposition has been attempted to be sustained, I apprehend have been as unfortunately selected. The case put of a man in Dublin administering poison in London, through the instrumentality of an unconscious and innocent person, will avail the gentlemen but little. Do they forget their own argument in another part of the case, that capital cases are already provided for, and that such a monster (unless it be still an unprovided and dispunishable case) would have been transmissible even before the statute? Nothing, too, could be less fortunate, than the cases of a person in Dublin procuring another to commit an assault, or mayhem, or perjury, or any misdemeanor in London. He is a principal (say they) in the misdemeanor; he must be tried where it was committed; and as he was not within the jurisdiction where the offence was committed, how can he be brought to justice, if an endorsed warrant shall not be allowed to reach him? but this reasoning is grounded altogether on an oversight of the law. At common law, the accessory in one county, to a felony committed in another, was not indictable in either. This miserable defect of the law, which occasioned so gross a failure of justice, demanded the interposition of the legislature; but, when it came under consideration, so cautious were they of invading that fundamental principle of the criminal law, the locality of offences and of trial, that they made the accessory triable, not in the county where the crime was committed, and the principal convicted, but in his own vicinage, in the county where the accessorial felony was committed.—So it is in the case of a trespasser. If he procure a misdemeanor to be committed in another county, whether in or out of the island, the law, it is true, makes him a principal offender; it makes him so, that justice may not be defeated or embarrassed in its efforts to reach him by the doctrine applicable to accessorial offenders; but still the law, consistent with itself, makes this accessorial principal indictable only in his own county. He could not be tried in Cork, or in London, or at all for the misdemeanor which he procured to be there committed while he resided in another jurisdiction; and your endorsed warrant would be but waste paper. After you had dragged him, by virtue of this process across the island, or across the sea, you must send him back to Dublin, if your object be to bring him to justice; for in Dublin, only, could he be tried for having procured the assault or the mayhem, or having suborned the perjury, to be committed in London. (2 Hawk. c. 5, s. 19, Doug. 796, *Rex v. Gough*).

I cannot, therefore, concur in this interpretation, which most unnecessarily strains the statute to cases of constructive presence. I cannot discover any class or description of

\* Concerning this see the case of sir Francis Burdett, A. D. 1820, *infra*.



offenders who will escape punishment, by limiting its operation to such as withdraw from the scene of their crime into another jurisdiction. The effect of such construction will be, to give the prosecutor an option to change the venue from the jurisdiction where the common law makes the party responsible, into another island, where the party is a stranger, where he can have no character to protect him, and where he has no compulsory means of securing the attendance of his witnesses; a construction, which public justice does not call for, and which exposes the party to very serious hazard, expense and oppression.—Acts of parliament, which are made to govern all, are presumed to be intelligible to all. No man of plain sense, unperturbed by the refinements of technical reasoning, could be at a loss to understand the objects of a clause which recites, “that malefactors often *escape* from one island into the other, whereby their offences remain unpunished;” and then provides “for transmitting *such* offenders into the island *in* which their offences were committed.”

Now what is the offence charged here upon the prisoner, and what are its circumstances, as appearing upon the face of the warrant, the return to the Habeas Corpus, and the affidavits made on his behalf, which, as far as they are not repugnant to that return, it is competent for him to read? A misdemeanor, charged to have been committed by the prisoner in England, while he resided in Ireland; the composing and publishing in Westminster a libel, which if composed by the prisoner, he must have composed in Ireland, which if published by the prisoner, must have been published by him in Ireland, before he *could* have published it in England; a libel upon the government, and certain much respected characters in Ireland, more properly triable in Ireland, where its malignity would be better understood and felt than in England; to be established, for the most part, by Irish witnesses, and for which, it is plain, that the prisoner is as open to prosecution in the county of Dublin as he is in the county of Middlesex. Then with what truth can this be said to be the case of an offender, “whose crime will remain unpunished,” if he be not transmitted to Westminster, by virtue of this endorsed warrant?

Gentlemen, on both sides, have indulged themselves in imagining cases. Give me leave to put a possible and no extravagant case, which might place all the *dramatis personæ* in rather an awkward predicament. Suppose the prisoner indicted also in Dublin, for publishing this libel, and that while he was *in transitu* to London under the present back-warrant, he, and the whole cavalcade, were overtaken at Conway, by a warrant from the lord chief justice of Ireland, backed by a Welsh justice. Suppose a scuffle to ensue between the two parties, who should have the prisoner—a classical combat for the body—

and that one of either party fell in the battle—I ask whether this would be murder, manslaughter, or justifiable homicide? In other words, to which party would the carcase belong?

But we are told that the offence for which the prisoner stands indicted is, the publication of that libel in England; that this is a distinct offence from the publication of that identical libel (i. e. from the circulation of some copies of the same impression) in Ireland; and that he is answerable for those publications only to the respective tribunals of each country. I confess I did not expect to see the fictions of the law thus spread out to catch and entangle any party. It is contended that after a prisoner has been convicted of publishing, suppose a seditious libel in Dublin, and sentenced to 500*l.* fine and two years imprisonment, it would be competent for the prosecutor to convey him under an endorsed warrant, at the expiration of the two years to London, and there to try and punish him again for the same libel published in London; and then, if the prisoner survive all this, that he may be taken to Edinburgh, tried and convicted there also, and his remains perhaps transported for the publication of that identical libel in Scotland! and this is the mild and constitutional use to which a right is claimed of applying this new process, so perfectly analogous to the spirit of the boasted criminal code of this realm! I ask no other concession than this candid avowal to demonstrate the formidable purposes to which a beneficial process is convertible by this extended and comprehensive construction of these clauses. And a better mode of trying a doubtful principle or construction cannot be suggested, than by pushing it to its fair and natural consequences. Upon the ground of its oppressive consequences it was, that the Court decided against the plain words and literal construction contended for in the *King v. Cartwright* above cited. Upon the ground of the sanguinary consequences to which a literal construction of the Whiteboy act would lead, we always have looked for the intention of the legislature in the preamble, and construed that clause accordingly. I cannot deny that a judgment had in one island for the publication could not be pleaded in bar of an indictment for the same libel published in the other; though this, considering the present relation of the two islands, is a defect in the law of both which ought to be amended. Between county and county you may plead *autrefois acquit*, or *autrefois convict*; but not so between island and island, though we are told that they stand in reference to each other as county and county. But admitting the publication in the three capitals of the same libel to be in *law* distinct offences, yet surely in point of *fact* and in common sense that publication, whether its diffusion be limited or extended, is but one crime. The train may be laid in Westminster, and there



may spring this moral mine of combustible infamy scattering fire and death in every direction; the crime it is true may be flagitious in proportion to the mischief and its extended operation; but still it is but one crime, whatever the extent may be of its ravages, whether it cross the Channel, the Tweed, or only the Thames. To say that the legislature would interfere in such a case and arm with any extraordinary process, a vindictive prosecutor to glut his resentment by multiplied prosecutions and multiplied punishments would be to make the legislature auxiliary to a malignant and implacable vengeance. The Court has no right to get out of a plain case by such refinement, and to be thus astute not in guarding but in construing away the liberty of a subject.

The construction of that branch of the statute of treasons which concerns the king's coin, is material in this part of the case. It is declared in the following words: "If a man counterfeit the king's money, and if a man bring false money into this realm counterfeit to the money of England, knowing the money to be false." It has been held, that though Ireland be distinct from the realm of England, and consequently money brought from thence may within the letter of the statute be said to be brought into the realm; yet, as the counterfeiting is punishable there by the laws of our king as well as in England, the bringing money from Ireland is no more within the statute than if it were part of England. (1 Hawk. c. 17, s. 67.)

Much might be said upon the ground that the construction contended for by the crown converts a prospective statute into an *ex post facto* law. It has therefore been called by counsel for the defendant an occasional act; and certainly such construction exposes the statute to that observation. But the best answer to so foul and unfounded an imputation would be, to say that the statute is not retrospective, that like the great body of our criminal code, it attaches only upon future offenders, and is not meant to act upon by-gone crimes. Will it be lightly believed, that the legislature intended to bring past offences under the grasp and scourge of this law? Every venial indiscretion of our early and thoughtless years, committed in the reciprocal intercourse between the two islands! Every assault or other misdemeanor (an instance well put from the bar) committed by an English militia officer or soldier in 1798, amidst the confusion and dismay of that calamitous period, who, instead of withdrawing to elude justice, was followed by the regret and gratitude of his fellow-subjects whom he had volunteered to save! I do not say that a case may not happen to justify an *ex post facto* law; but it must be a strong and cogent case, one in which the safety of the state, or its most important interests are concerned; and I add, that such a statute, though the crisis had called for it, would still be contrary to the genius, the

spirit, and the practice of the British law.—It has been said, however, from the bar that this statute adds no new crime to the catalogue, and that an *ex post facto* law is one which makes an action criminal that at the time of doing was innocent. But this I take to be too narrow a definition. Will it be said, that sir John Fenwick's bill of attainder was not an *ex post facto* law, and of the most unconstitutional kind, because it created no new crime, and only acted upon new evidence?

Upon the whole, the present case wants two ingredients essential, in my apprehension, to bring any case within the meaning and spirit of the present statute; I mean *escape* and *impunity*.—The prisoner has never been in England since the publication of the alleged libel, and therefore has not *escaped* or withdrawn from justice; and if he be guilty, *his offence is as open and exposed to prosecution and punishment* in Ireland as it is in England. I will not say that the provisions of the Habeas Corpus act are not examinable and open to modification and amendment, as well as those of every other statute. But the legislature will approach that bulwark of our strength and glory with cautious and trembling hands, and will not without imperious necessity disturb a single brick of the proud fabric, which encloses within its sacred shrine the everlasting object of British gratitude and veneration. The twelfth and sixteenth clauses we have seen declare it illegal to send any man a prisoner out of the realm but a *capital* offender; now it was unnecessary to trench upon this inestimable privilege of a British subject farther than to make *all* offenders amenable to justice, whose crimes would otherwise remain unpunished. This construction makes it a salutary and constitutional statute. It acts upon the principle sanctioned and adopted by the Habeas Corpus act itself, and only extends to misdemeanors the provisions which that statute limited to capital offences. Give it the construction contended for, and you transform a wise and wholesome regulation of reciprocal police into an engine of intolerable oppression.

A great deal more matter presses upon my mind; but I have already been too prolix. I shall conclude with declaring my decided opinion (as decided as it can be, consistent with my unaffected respect for the rest of the Court, from whom I differ), that the prisoner's case does not come within the statute; but that if I only doubted, I should say as I do now, that the prisoner ought to have the benefit of that doubt, and be discharged.

Lord Chief Justice *Downes*.—It is now my duty to give my opinion on this lamentable case, which I had in vain hoped would not have become a public spectacle, but have been closed where it began, at my own house.

The writ of Habeas Corpus, issued near the end of the vacation, was made returnable im-



*mediately* before me; was actually returned the following morning after it issued; and having, as soon as I signed the writ, requested the assistance of all the judges in town, and in the neighbourhood, when the writ was returned I was favoured with the attendance of six of the judges, including the chief justice of the Common Pleas, and the chief baron, being all the judges who were then so near town as to make it possible for them to attend, except my brother Osborne, whom, for an obvious reason, I did not call upon.

With this assistance—the ablest which this country could give me—I hoped that the case might have been then most satisfactorily disposed of; but the arguments of counsel having closed late on the evening of the day before the term was to sit, I found some difference of opinion among the judges (and which I now find still continues as to my brother Day), upon the construction of the act of parliament in question; and the judges then present, all recommended to me to adjourn the consideration of the writ and return into this court.

The case has now come on, on the same grounds as it did before me. The return made to the writ of Habeas Corpus has been already fully stated from the bench, and the question arising is, whether the arrest is legal; and that will depend on the construction of the act of parliament of the last session.

In giving my opinion upon this question, I might satisfy myself with merely saying, that I concur in opinion with my brother Daly, and for the reasons that he has given, which appear, to my mind, perfectly satisfactory; I cannot give better; but as I find my brother Day still of a contrary opinion, I think it right to state at large the grounds of the opinion which I have formed; and in doing so, I shall, of course, touch upon that point in which the principal difference of opinion between my brethren arises.

The statute has two general objects. First, with respect to county and county in Ireland, to put the law upon the same footing exactly as it stands in England, as to bringing criminals to justice. Secondly, as nearly as circumstances would permit, to put the two islands on the same footing with respect to bringing criminals to justice, as is before done between county and county.

To effect these two objects, the statute in question is modelled on, and made out of three British statutes, viz. 23 Geo. 2nd, c. 26, 24 Geo. 2nd, c. 55, and 13 Geo. 3rd, c. 31.

The material part of the first of these statutes is recited in the second, and it is observable that the first, which reached only to prisoners who *escaped*, had not existed more than one year, when its defects were discovered and the remedy applied.

The statute, 24th Geo. 2nd, begins by reciting—[here the chief justice stated that statute, and then proceeded.] The mischief to be remedied by both those acts was, that persons against whom warrants were issued, avoided the punishment of their crimes.

By the first act, that mischief is recited to have happened by the persons against whom warrants *have* issued *escaping* into other counties, out of the jurisdiction of the magistrates granting the warrants, and a remedy is enacted for that *mode of effecting* the mischief.

The following year it was found that the remedy was not sufficiently extensive, and did not reach the whole of the evil. And the act of the 24th enacts, that in case *any person against whom any warrant shall be granted*, shall, before the granting such warrant, *escape, go into, reside or be* in any other county, then the justice of the county where the offender is, may endorse the warrant, and the arrest may be made. Then provisions are made for bailing by the justice where the arrest is made in bailable cases.

These two acts form the substance and even the material words of the first part of the act which we have to construe, and that act recites the same mischief, *all the modes of effecting that mischief* comprised in the two British acts, and gives the *same remedy* in the *same words*.

And thus between *county and county* in Ireland, the criminal process is put on the same footing as in England.

The Union seems to have called the attention of parliament to the state of the two islands with respect to criminal process, and the legislature seems to me to have intended to put the two islands in that respect as near as possible upon the same footing as two counties.

The idea was not new; the same thing had been done, above thirty years before, between England and Scotland, and the act which effected it is the model of that in question, and is in all its provisions, *mutatis mutandis* the same [Here the chief justice stated the 44 Geo. 3rd, shortly as to the county part, and at length as to the third and fourth sections].

The provisions of this act, so far as it is material for the present question to observe, appear to me to be, except in one instance, between county and county, and island and island, substantially the same; equally to attach upon *all* offenders and upon *all* offences with the same general object, to bring the offenders within the reach of the proper jurisdiction, that has cognizance of the offence charged.

One difference between the provisions of this act much relied on in argument, is the mode of bail provided in the case between county and county, before the magistrate of the place where the arrest is made, while no such provision but a different one exists in the case between island and island. I shall not pass over that circumstance.

The two clauses, the third and fourth, upon which the question arises, are drawn in words the largest and most comprehensive imaginable. To any plain man who should read them, I should think no doubt could arise whether they did not reach *every* possible



crime, and every man accused, and wherever he shall be. General and comprehensive as these words are, plain and precise as their meaning is, much ability has been exerted to induce us to hold that the act cannot be understood in the sense which its words import; that we must restrain the generality of its expressions, by holding that there are either whole and numerous classes of offences intended to be excepted, or at least, that *this* case, circumstanced so far as it appears to us to be, cannot be held to be within it.

First it is objected that the act cannot be extended to misdemeanors which are bailable offences. How did the law stand before this act? what is the mischief pointed out by the statute? what remedy has it given? An ancient practice had prevailed, recognized to be legal by parliament in both countries. The king, by his prerogative, exercised by his secretary of state in England, and by his chief governor here, has at all times transmitted persons charged with capital offences. Whether in any other than capital cases, that prerogative had been before exercised, does not appear, nor is it material to inquire. It is plain that if it had been before exercised, it was taken away in England by the Habeas Corpus act of that country (31st Car. 2nd); and from that time, no person could be legally sent from one island to the other, except to answer for a capital offence. The power of the crown to send over the prisoner from one country to the other could not be questioned; it had been immemorially used, and was recognized in England by the Habeas Corpus act, and had also been recognized here by a statute in the year 1721. But though that power could be used by the crown in capital cases, it could be used *only by the crown*; and in the case of misdemeanors, no power of transmitting prisoners from one island to the other existed *any where*. Thus stood the law when this act was made; and the third section of the act recites, *that it may frequently happen, that felons and other malefactors may escape from one island to the other, whereby their offences often remain unpunished, there being no sufficient provision, by the laws in force, for apprehending and transmitting such offenders*. It is contended that by this preamble the enacting words of the statute, which if they stood alone *would manifestly reach all misdemeanors*, must be restrained; because,

First, the enacting clause cannot comprehend misdemeanors. Secondly, if it does, from the effect of the word *escape*, it cannot operate upon any offender who was not personally in the country at the time of the offence, and who did not leave it after.

The words *felons and other malefactors*, are the description, in the preamble, of the persons on whom the law is to operate; and it is said, that admitting *felons* to be within the provision, *malefactors* cannot mean persons guilty of misdemeanors. This construction goes to narrow the operation of the act to a degree

that it is impossible, from the words the act uses, can have been the intent of the makers. They have chosen the most comprehensive terms that the language could point out. *Felons and other malefactors* must mean, felons and malefactors other than felons. *Malefactor* is a term extensive enough to embrace every case of an offence punishable by law. It is used in that sense by Hale. It is used in the ancient statute *de malefactoribus in parvis*, to signify a trespasser. It may, as the counsel for the defendant have shown, comprehend the greatest offenders, but it equally comprehends the least; it comprises the highest and the lowest offences. The statute before us has the strongest comment on the word, when you compare the two most material sections.

The mischief of avoiding punishment is stated in the third section to be occasioned by the escape of *felons and other malefactors* from Ireland to England. The fourth section shows us what the act means by the words, for it says, for remedy of the like inconvenience, and shows you how that inconvenience arose, which is by the escape into Ireland, of persons guilty of crimes; so that the act manifestly uses the word to comprehend all persons guilty of any crimes; and the enacting clause is, in that respect, a farther comment, and shows that it meant any person against whom a warrant was issued for any crime or offence against the laws of England or Scotland. Then it is said, that the recital in the preamble, as to the defect in the law necessary to be remedied, must exclude misdemeanors from the contemplation of the makers of this act; because the act recites, *not that no provision exists by law, for transmitting persons guilty of misdemeanors, but that no sufficient provision exists for apprehending and transmitting "such offenders;"* and that, in fact, they must have meant to remedy the insufficient mode of transmitting felons, and have done that, by enabling magistrates to transmit them; but that if they meant to reach misdemeanors, they must have recited that no mode existed of transmitting them.

In fact, this preamble is perfectly true, and supported by the state the law was in, though we suppose the enacting words to extend to all misdemeanors; for the preamble says that there is no sufficient mode of transmitting such offenders, that is, felons and other malefactors, and it might well say so, when the person guilty of misdemeanor could not be transmitted at all. But a mode did exist of transmitting felons, which it has not taken away, but has added another equally applicable to all offences. No inconvenience appears to have arisen from the former mode of transmitting felons. It was not from any misapplication of the power of the crown, either in using or refusing to use its prerogative of transmitting felons, that any inconvenience arose, or is recited to have arisen. That mode is still legal and left unaffected by this



act; and I cannot bring myself to think that where the act has added another mode of transmitting offenders, equally applicable to the case of all offenders, and has applied it to all, and where it was necessary in the case of misdemeanors; I say, I cannot bring myself to think, that it meant only to vary the mode of transmitting felons, and not to affect persons guilty of misdemeanors, in which case only a necessity existed. The mode adopted as to felons, has certainly given a power to magistrates who had it not before; but some provisions existed; and shall we, therefore, conclude that the act did not mean to embrace the case of misdemeanors, where it was infinitely more necessary to make provisions such as, in express terms, it has made?

It is then objected, that as no power of bailing is given, we cannot construe the act to extend to misdemeanors; that in the former part of the act, as between county and county, a power of bailing is given, and which would have been in the latter, if it were meant to extend to bailable offences. With respect to this part of the argument, I must say that I do not feel that it presses with much force. On the best consideration that I can give the case, my opinion is, that notwithstanding the different provisions with respect to bail in the different parts of this act, as between county and county, where a provision is made for bailing in the county where the defendant shall be arrested, and that no such provision is made for bailing the party where he shall be arrested as between island and island, yet I cannot think that circumstance sufficient to induce me to construe this act, so as to exclude the case of misdemeanors from its operation.

The general object of the act was, to put the different islands with respect to criminal process, as much in the state of two adjoining counties, as circumstances seemed to admit. This particular provision is copied from the act respecting Scotland. Between two counties, in the same part of the United Kingdom, there was no difficulty. The law is the same in both countries; an offence bailable in one is also bailable in the other: the law was to be executed by magistrates sufficiently conversant as to what offences were bailable; and then for the convenience of the party arrested, he is permitted to be bailed in the place where the arrest takes place. The case is different between the two islands; between England and Ireland the law *may be* different as to bailable offences, and in some cases *is*; between Scotland and Ireland there is, certainly, altogether a distinct code of laws. This law was to be executed in the three different countries, by the ordinary magistrates. How should an ordinary magistrate in Ireland know what offences are bailable by the law of Scotland, or, *vice versa*? With respect to England, there may in some cases be a similar difficulty; yet it cannot be said that the legislature has overlooked the circumstance; it

has provided for it in the mode it then thought fit, by directing that the party accused shall be brought into the country where the offence was committed, and he is then to be taken before the justice of peace next to the place he shall land at, and there he is to be dealt with as if *arrested there*: he is thus brought within the jurisdiction, and then before a magistrate sufficiently conversant of the nature of his offence, who must know whether it be bailable or not, and who is to act accordingly.

I am far from denying, that this is a difficulty upon the party arrested for a misdemeanor; but it is a difficulty which was for the consideration of the legislature, and which, if they had thought fit, they might have prevented (and may hereafter) by adequate provisions: it affects not the present case as to hardship, but is used as an argument of construction. The subject was manifestly before the legislature, and they have, in express terms, enacted the same treatment both for felons and other malefactors, so far as to make them amenable; and if there be hardship, considering it as caused by the offender himself. When they are made amenable, *then* and *not before*, the treatment of the offenders will vary according to the nature of the offence. But I cannot bring myself to say, that because a milder mode might have been taken with respect to misdemeanors, the mode pointed out by the act must not be executed. I cannot say that the words of the enacting clause, so fully and comprehensively reaching the case of misdemeanors, shall be rejected against the obvious meaning of the act, against its express provisions, against its plain object; nor can I, on account of the possibility of a better provision being made with respect to bail, bring myself to say that much of the mischief manifestly intended to be remedied shall remain, and the remedy be so restricted as to be almost destroyed; for if we hold that this act does not extend to bailable cases, we reduce the whole of its operation, between island and island, to the single circumstance of changing the mode of transmitting capital felons by giving the same effect to the warrant of a justice of peace as to that of the secretary of state or lord lieutenant, which would be far, indeed, from remedying the mischief intended by this act to be prevented. It would leave misdemeanors, though plainly within the words and spirit, out of the operation of the act. It would reduce the operation of an act plainly intended to aid the administration of justice, by making offenders of all descriptions amenable, to this, that probably no one person would be ever brought to justice, who would not have been taken and sent over by the former mode of transmittal. It would amount to a repeal of the whole act, so far as respects the different islands, except a provision comparatively unimportant, and from which little or no benefit could be expected to arise.



A similar inference is drawn from another part of the act—the clause which directs that the treasurers of counties shall pay the expense of transmitting offenders.

It is asked—"can it be imagined that the legislature would suffer the man accused of a slight misdemeanor to be transmitted at the public expense?"—This would probably have been a good argument in parliament against the precise mode of making that provision; it is manifestly objectionable, and liable to obvious abuse; it would, perhaps, be equally objectionable, or more so, in the case of the slightest felony as in that of the greatest misdemeanor; as I understand the clause, it equally extends to both, and from it I can draw no reason that can convince my mind that either can be excluded from the plain and strong and comprehensive words of the enacting clause of the act, or that the act should be reduced, as I have already said, to have little or no operation at all.

Another ground of objection taken is this,—and it is important, because this head of objection seems to have great weight with my brother Day,—that the defendant has by affidavits shewn that he has not been out of the country since the fact he is charged with is alleged to have been committed; that he cannot, therefore, be said to have *escaped*; and that therefore he is not an object of the act. For this objection the defendant's counsel rely upon the preamble to the third section, which recites, that, whereas it may frequently happen that felons and other malefactors in Ireland, *make their escape* into that part of the United Kingdom called Great Britain (and *vice versa*) whereby their offences often remain unpunished, there being no sufficient provision for apprehending *such* offenders; that is, offenders *who have escaped*. And it is contended that the act cannot, therefore, extend to any person (felon or otherwise) who has not escaped; and of course, that the act cannot reach the defendant.

I construe the word *escape* in the preamble, in the same way that the defendant's counsel do, and think that its meaning is, a person who has fled from justice, after the offence committed; and that such is not the case of the defendant is stated by his affidavit, which shows him to have been in Ireland at the time, and long before, and ever since the period at which, he says, the publication first took place. If I thought that this act of parliament made it necessary, that to bring any person within it, it should be an essential part of the case that he should have *actually fled from justice*, I should be of opinion, without the affidavit, that the prisoner must be discharged; because if that circumstance of flight or *actual escape*, were necessary, it ought to have been alleged upon the return; for the return must show a complete legal ground for the arrest, and this contains no such allegation.

But I am far from thinking that the opera-

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tion of the act is to be confined to criminals who have *escaped out* of the country where the crime has been committed. I take it to be a sound rule of construction, that although the preamble may be a key to the construction of a statute, yet it cannot always control the operation of the enacting words.

In Athoe's case, 8th Modern, 144, the Court laid it down, and in a capital case, that preambles are no more than recitals of inconveniences which do not exclude any other to which a remedy is given by the enacting part. And Mr. Justice Buller, in delivering the opinion of the twelve judges of England, in the case cited by Mr. Attorney-general from East's Pleas of the Crown, 1113, says, "Where the enacting clause of a statute refers to such offences only, as are mentioned in the preamble," (and I add on the same principle, where the enacting clause refers only to the same mischief and cause of the mischief as in the preamble) "the enacting clause may thereby be controlled or restrained; but in this case" (says Mr. Justice Buller, and I say so here) "it would be doing violence to very plain words, and repealing some of the obvious provisions of the act, if it were so restrained. It is," says he, "no uncommon thing for a statute to recite a particular mischief as the cause of making the statute, and yet, for the enacting part of it to embrace more general objects, and to extend to other cases, which the legislature thought within equal mischief."

If the enacting clause were to be restrained by the instance stated in the preamble here, it would upon the argument extend only to cases where the party committing the offence in England, fled from the country to avoid punishment either before, or after the warrant issued, or at least left that country. But the enacting clause in express words extends to all persons who, having committed any crime against the laws of England, shall escape, go into, or reside *or be*, in the country where the arrest is made; and we must (to admit the construction contended for by the defendant) hold that the words *reside or be* must be rejected, although they are words (as Mr. Justice Buller says) embracing more general objects, and extending to cases within equal mischief.

What is the mischief recited in the preamble here? Not the escape simply: no, that is stated as one instance causing the mischief. The mischief expressly stated in the preamble, as caused *by that instance*, *escape*, is, that *their offences often remain unpunished*, there being no sufficient provision for apprehending them. The cases additionally provided for in the enacting clause, of residing and being in the country, out of the jurisdiction where the offence was committed, create the same mischief of the offence remaining unpunished; for the absence of the party accused from the limits of the jurisdiction, equally creates the mischief in the preamble as an actual flight, for he can no more be brought to justice in

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the one case than in the other. The enacting words therefore embrace those cases, and enact that a man charged with an offence in either country shall be arrested wherever he is found; this is the general effect of the enacting clause: it thus reaches the whole of the mischief recited, and in fact, does not by this construction go a jot beyond it.

The rules for construing statutes laid down in Heydon's case, in Coke, conclude with this, that the judge is to make such construction as shall suppress the mischief, and advance the remedy, and to suppress subtle inventions and evasions, for the continuance of the mischief, and to add force and life to the cure and remedy, according to the true intent of the makers of the act. This solemn duty I think I perform by the construction I give to the words of this act.

But it is said that to hold the construction which I adopt, we must reject the words "escape and go into:" this has been fully answered by the attorney-general; they are included in the subsequent more general words, and you cannot reject those general words without disappointing the plain intent of the act.

Then it is said—we cannot suffer the defendant to be transmitted, because the offence, circumstanced as he appears, is not triable in England. It is a sufficient answer to this to say, that he is indicted in England, and a warrant is come over to this country; for if he be indicted there, I know no authority we have to decide upon their right of jurisdiction, and the act requires that the party accused shall be made answerable to the jurisdiction where he stands accused.

But on what grounds are we expected to hold that doctrine? The defendant shows by his affidavit, that he has not been in England for a year before the publication, nor ever since. If this were offered to us as a defence to the charge, or if in his affidavit the defendant absolutely denied his guilt,—which he does not,—*we* could not listen to it, for the defence must be made where the charge is made.

It is said, if this were a felony, being of an accessorial nature, it could not be tried in England, but if triable at all, must be tried here, and so, that there is no failure of justice; and then, to show that it is possible to try the defendant here, an affidavit is made, to show that the libel complained of was actually published here. Now, without resting on the fact that if the law were so, the affidavit does not show it to be the same libel that he is indicted for, that was published in Dublin, though Mr. Emerson states he believes it the same; yet I say, supposing it to be the same, and if we had the power of deciding on the jurisdiction of the Court of King's-bench in England, can we say that they shall not be allowed to try an indictment for a libel for publishing the same papers in Westminster? Why? Because af-

terwards the same libel was published in Dublin, not by the defendant but another; and then the trial of this defendant shall not be had in Westminster, because another man has committed the same offence in Dublin!

But suppose the fact were, that the defendant himself had published it in Dublin, is that a reason he should not be tried in Westminster, if he is charged with committing a similar offence there? I think not—they are distinct offences, distinct in law, for an acquittal or conviction of the one could not be pleaded in bar of the other; and for any thing we can know, they are distinct in fact as to the procuring the publication. And to decide that the Court of King's-bench in England shall not try this case, we must hold, that it is impossible for a man residing in the county of Dublin to procure a publication of a libel in Westminster, and that we have a right to go into that defence, and to prohibit the Court of King's-bench in England from trying an indictment found before them.

But it is said,—and this seems to have weight with my brother Day,—that the defendant cannot be transmitted, because, as he may be tried here, though not for the *same*, yet for a *similar* offence, he cannot be said to *avoid justice*, and therefore is not an object of the act. To this I think a short answer may be given; that the avoidance of justice meant by this act, is the not submitting to trial *where the accusation is*, and that it is no sufficient reply to make, that the defendant is ready to answer where no accusation is made, or, for any thing we can tell, ever will, or can be made with effect.

This last ground of objection to the operation of the act, would equally apply, if the defendant were indicted at Cork for a publication there, and if a warrant for apprehending him were endorsed as this is, in the county of Dublin. He might say, I have not been in Cork these ten years, and another man has published it in Dublin, and I ought to answer there. But the gentlemen admit that the act is perfect and without defect, as between county and county, and reaches all possible offences and every offender, and therefore would reach the present case, and why? Because, say they, the preamble of the county clause contains the words "reside and be," and therefore the legislature had such cases in contemplation, but not in the clauses respecting the two islands—the preamble there has only the words "escape and go into."

I have already stated the effect of the preamble; the enacting words are the same with respect to island and island, as they are between county and county; the mischief is the same; the act has the same precise object in both provisions, and must therefore have the same construction in both.

But there are other objections made in the argument, some of which, perhaps, I ought



to advert to. It is said that the Habeas Corpus act of England is repealed by my construction. If it is, that has been done by parliament. I do not carry the act a jot beyond its express words. This act certainly creates a power of bringing offenders to justice, which, within the provisions of that most valuable statute, was prohibited; but I believe, and hope, that few men will think that a law which does that, has done any injury to public liberty.

Many inconveniences are pointed out, with great eloquence and ingenuity, as likely to follow the construction I give the act. It exposes, say the gentlemen, every man in each island to be taken to the other, to answer the most frivolous charge, perhaps invented and contrived by malice. Abuses of the best laws may certainly happen—they may be punished where they occur, but cannot be made impossible. And, in truth, the same inconveniences might exist, even if the construction of the act confined it to cases of felony; but, as I have already said, by such construction, the plain intent and operation of the act would be construed away.

Would there be no inconvenience in the desired construction? Would there be no inconvenience in reducing this act merely to the effect of changing the mode of transmitting felons, and leaving persons guilty of enormous misdemeanors free from apprehension of punishment? If we hold, that on account of the personal presence of a defendant here, he shall not be obliged to answer to a crime affecting the peace of England, capable of being committed by him, though resident here, would that be no public inconvenience? Is there no public inconvenience in holding, that a man may safely write libels here, and transmit them to England for publication there, disturbing the peace of that country and defying its jurisdiction? Is there no public inconvenience in holding, that a resident here might plan, and by his instruments in England effect, the greatest fraud without being responsible in either country? Or in the case put by the attorney general, that a man might send poison, under pretence of medicine, to England, and actually commit a murder there; but, not being personally present, shall he be protected here, in a case where a country under a distinct separate and independent government would probably give him up to justice—nay in a case where even hostile governments have been known to do it?

And what injury to public liberty has any man to apprehend from the construction I give this act? I do no more than say,—and that in compliance with the express words of this act of parliament,—that any person or persons resident in either of the two countries, and accused by a competent jurisdiction

in the other, of any offence against the law of the country where he is accused, must answer it. If he were there accidentally or voluntarily, the present defendant could not resist being amenable. We say that this act of parliament lends its aid to the administration of justice, against those who will not voluntarily submit, be their offence what it may.

I am desirous only of adding one more observation, in answer to the principal ground on which my brother Day has rested his opinion—that to be within this act, the person accused must have been, at the time of the offence, within the country, the law of which he is accused of violating, and must have fled from it, or left it afterwards; and it is this—this act is to be executed by the ordinary magistrates, and it gives those magistrates no power of inquiring into the fact of escape, or any of the circumstances attending the offence. The only document for the magistrate to act upon is the warrant coming from the country where the offender is accused: it is impossible for the magistrate to ascertain the fact that is relied on, as exempting the person accused from the operation of the act. The arrest (from the nature of the case) must be made, before he can be apprized of that fact. If the prisoner tells him that he is not an object of the act, because he was not in the country where the crime is charged to have been committed, at the time that the offence is supposed to have been committed, is the magistrate to take the prisoner's word, or his affidavit of that fact? Or is he to examine witnesses to it? Or to call for the informations given in England, or the witnesses who swore them? In short, in all such cases, if persons, circumstanced as the defendant is, are exempt from the operation of this act, the magistrate is guilty of false imprisonment, and liable to an action, without any means given by the law of preventing it.

I shall now close this unhappy case, in many respects so lamentable. Much more might be added to what I have said, but I have touched on the principal parts of the subject; and shall only add, that I have no manner of doubt that the defendant's case is within the act of parliament; and of course, that the return is good, and that he must be remanded.

The legality of the arrest was thus confirmed by a majority of the judges present; but the defendant having obtained a writ of Habeas Corpus out of the Court of Exchequer, the question was re-argued on the fourth day of February, before the judges of that court.



*Proceedings before the Court of Exchequer\* in Ireland, in the Case of the Hon. Mr. Justice Johnson.*

*Court of Exchequer, Dublin,  
February 4, 1805.*

*Present.*—The right hon. Barry viscount Yelverton, lord chief baron; the honourable Mr. Baron George; the honourable Mr. Baron [William] Smith; the honourable Mr. Baron Maclelland.

The writ of Habeas Corpus, and the return thereto,† and the affidavits‡ of the hon. Justice Johnson and John Swift Emerson, gent. being read,

Mr. Burrowes, after stating the facts disclosed by the return and affidavits, spoke as follows:—To justify this arrest, and to warrant your lordships to remand, an act of parliament of the last session is resorted to. If that act of parliament must be so construed, abhorrent as such construction must be to the principles of our laws and constitution, the legislature must be obeyed; and we cannot be suffered to take refuge in judicial misconstruction from the mandates of the supreme power of the state.

Whether the legislature has so clearly and unequivocally expressed its will as to preclude all judicial interpretation in favour of pre-existing rights of the most sacred kind, is now to be argued and decided. What is the proposition which, in order to justify this arrest, it is admitted must be received as the perpetual law of these realms, enacted by this statute? I say perpetual; because, as the act is not limited in duration, this Court never can make the possible correction of it in future any ground of their construction; and you must decide whether the legislature in-

\* To the original report of these proceedings the following advertisement was prefixed:

"In laying this work before the public, I have the satisfaction to state, that it has been compiled from original and authentic documents: I beg leave, at the same time, to express my acknowledgments for the kind condescension of those learned and eminent characters, by whose assistance I have been enabled to prepare a full and correct report of a case, which has so much and so justly interested the attention of the people of Ireland.

"J. S. EMERSON."

"No. 48, Camden-street,

"April 8th, 1805."

† See p. 87, 88.—N. B. The return to the writ of Habeas Corpus, which issued out of the Court of Exchequer, stated, in addition, the rule to remand, which was made in the King's-bench.

‡ See them, p. 103, 104.

tended that its subjects should exist for ever under such a rule. The proposition contended for is, "That wherever *any* man of *any* rank, however low, shall obtain a warrant from *any* magistrate, for *any* misdeameanor, however petty, against *any* man, however high, he may cause him to be arrested in *any* extremity of the United Kingdoms, and to be transmitted at the public expense, without a right of being bailed, to the kingdom where the offence is charged to have been committed; even though such person never had been for one moment in the kingdom to which he is transmitted." Such a proposition startles every man who hears it. The peculiar hardship of my client's case is merged in the public mischief; and I will not weaken his claim to a constitutional interpretation of this act, by dwelling upon his peculiar situation. It is equally his wish and his interest, that this act should be discussed upon general grounds; and in respect of him personally I shall only say, that in rejecting the attorney-general's offer to waive the operation of the law in his case and accept of bail, he acted as became the subject of a free state; and if he had compromised this question, and submitted to a violent and unconstitutional interpretation of this law in return for personal indulgence, he would have disgraced his character as a judge, and ought to be stigmatized.

In arguing this question, I will *in limine* admit that the obvious and primary (I do not say necessary) meaning of the enacting words establishes such a rule. The enacting words are sufficiently comprehensive to include my client's case, and every case which I have stated; and unless there be passages in the act which, according to the rules of judicial construction, may explain and limit the extent of these words, my client must be remanded. I admit, also, that the enacting words of a law are not necessarily restrained by the title or preamble; but that, on the contrary, the enacting words may extend to many cases not mentioned in either title or preamble; and that judicial interpretation in pursuit of the manifest intent of the legislature, may extend a law to cases not strictly or literally within title, preamble, or enacting words. I am so far from denying this, that I conceive that the principal strength of my client's case depends upon its admission; because, I mean to argue, that from the whole of the act, accurately examined and collated, you never can say that it was the will of the legislature that such a rule should be established; and it is not my interest, nor am I warranted, to fetter judicial interpretation within narrow and irrational limits.

Upon two grounds I contend that the act



does not embrace this case:—first I say, “That as to the transmission of persons from kingdom to kingdom, it ought to be limited to persons charged with offences not bailable:”—Secondly, “That it only extends to persons who having committed an offence in any place where they were personally present, have ceased in any way to continue within the jurisdiction where the offence was actually committed.”—Mr. Justice Johnson is only accused of a misdemeanor which is bailable; and I have a right to assume (it being disclosed by affidavit, and not contradicted in the return), that he was in the kingdom of Ireland when the alleged libel was stated to have been published, by his procurement, in England and ever since; consequently, if I establish either ground, he must be discharged.

In construing this act, I am not ashamed to refer you to an elementary book; and to a part of that book at which a diligent student might arrive in the first day of his legal studies. The rules or signs, as he terms it, by which the will of the legislature may be best explained in acts of parliament, are no where laid down with more judgment and clearness than by Mr. Justice Blackstone, in the first volume of his Commentaries, page 59. These signs, according to that elegant and luminous writer, are, 1st, the words—2nd, the context—3rd, the subject matter—4th, the effects, or consequences—5th, the spirit and reason of the law.—I have already admitted that the first impression of the mere enacting words would make against my argument; but if I succeed in proving that upon the whole four latter grounds of interpretation, they are struggling on the other side against the will of the legislature, as well as against the liberty of the subject, you will no doubt discharge my client.

Apply these principles to my first objection—the legislature manifestly makes a distinction between the objects of the acts in the arrest and transmission of offenders from kingdom to kingdom, and from county to county within the same kingdom.

If no distinction were intended, the whole object of the legislature would be accomplished by the first section, by merely substituting the words United Kingdom for Ireland whenever the latter term occurs; and the third and fourth sections would not only be superfluous, but the law would be uniform and free from the objections to which it is admitted by the other side to be liable, and which it is said *will be* remedied by the legislature.

Upon the other side it is admitted that a distinction is made—What is the distinction according to their interpretation, and what according to ours? and let me ask you, in the first place, which is most probable to have been the intention of the legislature?—They say that as between kingdom and kingdom every class of offenders is included as well as

between county and county of the same kingdom; but that persons arrested in one kingdom for bailable offences committed in another cannot be bailed, though as between county and county they may.

We say that as between kingdom and kingdom the law only acts upon offences not bailable, and that therefore the objects of the law cannot be bailed.—Their distinction repeals the Habeas Corpus acts of both countries; our's conforms to them; their distinction respects the right of being bailed when its violation would be comparatively unoppressive, and annihilates it when it is most necessary. According to their distinction we must suppose that the legislature, when in the first section they are providing for the arrest of a person accused of a misdemeanor in an adjoining county, are so tender of liberty as to provide that he shall be bailable upon the very spot where he is arrested; but that in the third and fourth sections they lose sight of every pre-existing right and valuable personal privilege, and empower the transmission of the same class of offenders from kingdom to kingdom, without a right of being bailed; and that they have distinguished the cases for the sole purpose of making this preposterous and inverted distinction. If it be said that the law would be imperfect if it did not act upon inferior offenders as well between kingdom and kingdom as between county and county, I answer that it is a vain hope to frame any law which will not be in some particular defective; and that to exclude all inferior offences would upon the whole be more practically wise than to include them all—inasmuch as the safety and peace of each distinct kingdom might be considered as sufficiently provided for by the pursuit and bringing back to punishment of daring and dangerous criminals, while the flight and banishment of inferior offenders, who would still be punished if they should ever come within the jurisdiction, might be deemed sufficient.—I shall now proceed to show how the context of this act bears upon and establishes my distinction; but I shall first state how the law before this act stood in relation to the arrest and transmission of offenders from kingdom to kingdom. First, no man could be legally arrested for any misdemeanor committed in another kingdom, consequently he could not be legally transmitted; the case was entirely unprovided for, and perhaps in wisdom should for ever remain so. In respect of felons and traitors, the practice, and perhaps the law, was different. There existed a practice, founded upon the ancient prerogative of the crown, of arresting high delinquents accused of offences not bailable, and transmitting them for trial from kingdom to kingdom, and this usage was recognized and sanctioned by the Habeas Corpus act in England. The arrest was always under a secretary of state's warrant, and the prisoner was transmitted by a king's mes-



senger. No ordinary magistrate ever did, or could grant such a warrant: it was a mere state proceeding, optional on the part of the crown, and the authority was local and limited. In respect therefore of the arrest and transmission of higher offenders, there was some, but an insufficient remedy; in respect of inferior offenders none.

The pre-existing law being as I have stated, strongly illustrates the inference I derive from the preamble and context of the act; and the object, spirit, and policy of the act, and the consequences of the different interpretations in my opinion remove all doubt upon the subject.

The preamble of the first section, which establishes the law as between county and county, recites, "Whereas it frequently happens that persons against whom warrants are granted by, &c. &c. escape into other counties, &c. &c." Nothing can be more comprehensive than the description of the objects of this act mentioned here and in every part of this section. There is not a syllable to restrain their generality. The description both in the preamble and enacting part is precisely the same. The context concurs with the enacting words, and the spirit and reason of the law are answered by a literal and comprehensive construction—no bad effects can follow from it—no grand constitutional law is indirectly repealed—no vital principle of personal liberty is sacrificed.—The letter, context, object, spirit, and policy of the law are the same; and the legislature, having unquestionably intended to extend its provisions to misdemeanors, have provided that the liberty of the subject should not be sacrificed; and they have enacted a right of being bailed in bailable offences, commensurate to the new power of arrest which they have introduced.

Look now to the preamble, and examine the context of sections 3 and 4, which provide for cases between kingdom and kingdom. How are the objects of these sections described? "And whereas it frequently happens that felons and other malefactors in that part of the united kingdom called Ireland, make their escape into that part of the united kingdom called Great Britain." Is it a violation of our language to say that these words import the higher and more enormous offenders? If it be said that the term "malefactors" may be used to designate any offenders, is it no answer to state that that term is generally used to denote the higher offenders? that felons, and other malefactors, according to the rules of construction, mean malefactors of a like kind? and that if malefactors be interpreted as comprehending all offenders, the word felons may be rejected as surplusage? But examine the context farther, in order to discover who are the objects of this part of the act. "Whereby their offences often remain unpunished, there being no sufficient provision by the laws now in force for apprehending

such offenders, and transmitting them, &c. &c." Is it not manifest from these words, that the offenders within the contemplation of the legislature are felons and other malefactors, in respect of whom there pre-existed *some*, but *an imperfect*, provision by law as to arrest and transmission? In respect of inferior offenders, there pre-existed no provision at all. In respect of the higher order of criminals, there pre-existed an imperfect, and insufficient provision. Does it not follow that the legislature most clearly meant to extend the provision of these distinct sections to the latter description of offenders, and not to the former?

But it is said the enacting words are universal, and not to be restrained by the preamble. I admit they are not necessarily to be restrained; but I contend, that when the context, the subject matter of the law, the effects and consequences of the different constructions, and the spirit and reason of the law, all (as in this case) conspire to limit the generality of the enacting words, all those latter guides conjointly ought to govern. The enacting words certainly are very general: "If any person or persons against whom a warrant shall be issued, &c. &c. for any crime or offence against the laws in force in Ireland, &c. &c." If this description in the enacting part stood alone and unexplained by other words and by the context, a word could not be said in support of my construction; but I contend that it is not unreasonable or unprecedented, in pursuit of the intention of the legislature, to construe "any person" to mean "any such person as was before described;" and the words "for any crime or offence against the laws," to mean "any such crime or offence as was before described."—By the Whiteboy act, a number of offences are made capital by words totally unlimited, and by distinct sections. Innumerable instances have occurred of cases which have fallen manifestly within the enacting words; yet the judges have looked at the title, the preamble, and the recitals of that act for its object, and have never considered any case within it, unless proof was previously made that the particular county, where the question arose, was in that rebellious, riotous state, which gave rise to the severe provisions. Upon a similar principle was *Renwick Williams's case*\* decided, by which a monstrous offender, clearly within the letter of the law, was acquitted, because his case did not fall within the evil intended to be remedied by the law under which he was tried.

It has been argued, that by the 13th Geo. 3rd in the British parliament a similar law was enacted, as between England and Scotland, with almost the same recitals and enacting words; and that that act extends to all misdemeanors, although no provision is made for bail. I say, that if these two acts be collated, important differences will be found

\* 1 Leach, 529.



between them. But it is unnecessary to waste time in this inquiry, because the whole gist of the observation is assumed without any proof. No single case has been adduced by which the 13th of Geo. 3rd has been construed to extend to misdemeanors; and, I say, that it is more probable that such an extension of that law was never attempted, than that it was constantly and universally acquiesced in. Can it be credited, that where a judge of the land has construed this law not to extend to misdemeanors, and where there is at least so much doubt upon the subject, that no Englishman or Scotsman, jealous of his rights, and struggling for his liberty, would have taken the opinion of a court of justice upon the subject? Such a supposition is unnatural in the extreme; and we ought rather to presume, that no Englishman or Scotsman was ever transmitted out of their respective kingdoms for a misdemeanor under this act.

It appears by this return, that the court of king's-bench has construed this act against my argument. It cannot be contended upon the other side, that this determination is binding upon you; and I will not deny that it is a formidable precedent. It is, however, but the determination of a divided court, from which also one judge was absent: and in a new case like this, when the most valuable rights of the subjects of the whole empire are involved, I should hope that you will attend more to the argument than the authority. I have a high respect for that Court: for the amiable and dignified person who presides in it I feel more than respect; I met him with an early and instantaneous predilection, which has ripened into habitual and almost involuntary esteem and veneration. I could not if I would, I would not if I could, detract from the weight of his authority by disparaging reflections. I shall not wound his feelings by praise, or the feelings of others by censure. I shall only say (what the occasion extorts) that if I were to look for any imperfection in his character, I must search for it in the excess of some noble and virtuous propensity, some amiable or admirable quality of the head or the heart. I would say that he has, perhaps, too much of a quality of which most other men have too little: you perceive I mean that intellectual humility, that modesty of mind, without which wisdom cannot exist, and even genius loses much of its lustre. To the predominance of this quality, I would, perhaps, ascribe this judgment; and I would add, that, upon such a subject as this, he would be more liable to err than upon any other. When the construction called for might appear to be an extension of jurisdiction, an interference with the functions of the legislature, a sort of constructive legislation, I should fear that the modesty of his nature might, perhaps, too much control the suggestions of his powerful and comprehensive understanding. But certain I am, that if you shall differ from him, he will rejoice

that the liberty of the subject has survived this act, and will feel more gratified than rebuked.

Upon the second objection, namely, "that this act only applies to persons who, by change of place in any way occurring, have ceased to continue in the jurisdiction where the offence was committed," the case of my client is still stronger, because his case does not fall within the necessary and obvious meaning of the enacting words, and the context, object, spirit, and meaning of the legislature; and the consequences of the construction contended for on the other side are still more powerful in excluding his case under this head of objection than under the former.

It has been, I think incorrectly, said, though by high authority, that the object of this act being to prevent impunity in general, the recital of one mode by which impunity is obtained, ought not, in any degree, to control the extension of the remedy to other modes by which justice may be eluded. Most manifestly the act has no such comprehensive object, as to correct every abuse by which impunity of crimes might be procured. Many modes of eluding justice may exist, and are in daily practice, to which the legislature had not the slightest notion of applying its provisions. Every line of this act shows that the sole object of the law, and of those laws which it nearly copies, was to prevent the evasion of justice by a removal out of the jurisdiction.

The 23rd Geo. 2nd, c. 56, s. 11, in Great Britain was the first act upon the subject. The preamble and enacting words of this section are confined to persons escaping out of the jurisdiction *after a warrant issued to apprehend*, and no provision is made for bail in bailable offences. It was obvious that the act should have comprehended persons escaping out of the jurisdiction before the issuing of the warrant, and residing or being elsewhere; accordingly, the 24th Geo. 2nd, ch. 55, after reciting this section, proceeds, "and whereas such offenders may reside or be in some other county, &c. out of the jurisdiction of the justice granting such warrant as aforesaid, before the granting such warrant, and without escaping or going out of the county, &c. after such warrant granted." Now it is plain, that the words "without escaping after such warrant granted," import that the persons in contemplation have escaped before warrant granted. Such construction is agreeable to the ordinary rules of interpreting language, and is forced upon us by the obvious defect of the former act, and the nature of the subject. Now see whether the enacting words may not without violence be construed to extend merely to persons, who having ceased to continue within the jurisdiction where they have violated the laws and ought to be tried, are fit objects of legal pursuit; "be it therefore enacted, that from and after, &c. &c. in case any person against whom a warrant shall be issued by



any justice &c. of any county, &c. shall escape, go into, reside, or be in any other county, &c. out of the jurisdiction of the justice granting such warrant, it shall and may be lawful for any justice of the county, &c. where such person shall escape, go into, reside, or be, to endorse his name, &c. &c." Now I conceive it to be a natural and reasonable construction of these words, in an act made manifestly for the pursuit of fugitive offenders, to interpret the words "shall reside or be," to mean "shall become resident or existing." The contrary interpretation renders the words "shall escape or go into," totally superfluous and unmeaning; for if the words *reside or be* apply to all cases and all modes of residence or existence, as is contended for, such words would manifestly include the cases of residing or being, after escaping or going into the places to which the process is extended. Such an interpretation also would render the law *ex post facto*, when it is expressly framed to commence from a certain date, and must be considered as prospective. The date of the act cannot refer to the issuing of the warrant, but to the act of the object of the law bringing himself within its operation. The objection that a law is *ex post facto*, never can be answered by rendering its force dependent upon the act of a third person, subsequent to the passing of a law. I conceive that the words *reside or be* are introduced, in order to extend the effect of the law to all cases in which an offender is found out of the jurisdiction in which he personally violated the law, without distinguishing how, why, or under what circumstances he ceased to continue where he had offended. It might be deemed reasonable and just to bring an offender back to trial, whatever might be the cause or occasion of his removal out of the jurisdiction, although it would be repugnant to the principles of justice to force him into a jurisdiction within which he never had been.

Such are the two English acts introduced to regulate this subject between county and county in England; and it has been urged by the attorney-general in another place that the first section of the act we are construing is founded upon these acts, that the preamble of the present act contains in substance the same recitals, and that the enacting words are identically the same. The preamble of the first section of the present act recites, "whereas it frequently happens that persons against whom warrants are granted, &c. escape into other counties, &c. and it may also happen that persons having committed offences in some county or place, may reside or be in some other county or place, out of the jurisdiction, &c. whereby, &c." The former recital comprehends the objects of the 23rd Geo. 2nd, namely, persons escaping after a warrant, and the latter recital extends to persons ceasing to continue within the jurisdiction after the offence committed, whether they had left it before or after the warrant

was issued. The words *having committed* in the second recital manifestly mean *after having committed*, and the words *may reside or be*, must mean *may become resident or existing*; and there is not a single sentence or word in any of the acts to show that the legislature had in contemplation the case of a man residing or being out of the jurisdiction, at the time the offence was committed within it.

If such interpretation be admissible as to the law which provides as between county and county, with what additional force does it apply to cases arising between kingdom and kingdom! The recital in the sections providing for the latter cases, is confined to felons and other malefactors escaping from one kingdom to another, and the enacting words are precisely the same.

I have argued from the words, let me now argue from the silence of the legislature. If the law had been intended to extend to constructive misdemeanors between kingdom and kingdom, would it not have made a provision for bail? Would it not have armed the prisoner with process to compel witnesses from the place where he was when the fact was committed, and where his defence would most probably arise, to attend his trial? Would it not have provided for the trial of accessaries in Ireland to felonies committed in England? As the law stood before this act, and still stands, an accessory in Ireland to a murder or felony in England could not be tried in either country. This act creates no new offence. It does not extend the jurisdiction of any court. It merely facilitates process in bringing offenders, who were before subject to trial, before a tribunal which before had cognizance of their offence. It follows clearly that an accessory resident in Ireland to a murder or felony committed in England cannot be arrested and transmitted under this act. To what end transmit him? If he cannot be tried, he must be discharged. You never could construe an act expressly made to facilitate the arrest and trial of offenders to extend to persons who cannot be tried. Such persons, however criminal *in foro conscientie* are, technically speaking, guilty of no municipal offence. They are in the situation of accessaries in one county to felonies committed in another before the 2nd and 3rd Edw. English, and the 10th Cha. 1st, Irish. They are objects of total impunity—what follows? That if Mr. Justice Johnson had procured a murder or felony to be committed in England while he resided here, you must discharge him without bail; but according to the argument upon the other side, upon account of the slightness of his offence you must transmit him without bail. It would be an insult to the legislature to impute to it so impolitic and preposterous a distinction; and in refusing to establish it, you vindicate their character, instead of usurping their power. Can you believe from any part of the act, or from all its parts collated and compared, that the legislature intended that



*no accessory* to a murder or felony, however atrocious the guilt, should fall within its provision, but that *every man* who should procure a misdemeanor, however venial, to be committed, should be subject to its severest provisions? That the former class of offenders should triumph in total impunity, and the latter languish under the bitterest persecution?

Upon the whole of this case, I conceive that Mr. Justice Johnson is entitled to be discharged; because he is a subject of a free state entitled to personal liberty, which he has not forfeited by any crime committed against the law of the country in which he lives; because the law of the imperial parliament (whose supremacy he was himself so forward in establishing) under which, for a constructive misdemeanor, he is treated as a prisoner not bailable, is in respect of him *ex-post facto*; because felons and criminals escaping justice by flight or removal from the jurisdiction which should try them, appear from the title, preambles, and whole spirit of the act to be the sole objects of the legislature; because the Habeas Corpus acts of both countries would by a contrary construction stand perpetually repealed; because to support the arrest you must believe that the legislature in one and the same act provided for personal liberty where its violation would be comparatively uninjurious, but left it totally unprotected where the most oppressive consequences would follow its invasion;—that they intended to leave accessories to felonies and murders in total impunity, and to pursue inferior offences which the law does not treat as accessory, merely from their slightness, with the bitterest vengeance;—that in pursuit of justice they should for the slightest offence transmit a man as a felon to a foreign country without furnishing him with process to command the attendance of witnesses, and that in a case where the jurisdiction at home is full as competent and much more fit to try the offence. Until this question is finally settled by judicial determinations, I never can credit that the imperial parliament intended to leave the subjects of the united countries under a rule so unequal, so mischievous, and so absurd. It might perhaps be credited, that in violent times, under the predominance of an arbitrary spirit, a minister might press forward a law which would leave the liberty of the subject at the mercy of the crown: but I cannot credit, that any minister, in any parliament, would empower any man to violate the liberty of every other whom he might dislike, under the slightest pretext—would defray the expenses of his malicious prosecution, and subject a man, because he was charged with the slightest offence, to inevitable punishment, more heavy than could be inflicted in consequence of his confession or conviction of an offence of tenfold enormity. I therefore conceive that there is nothing in this act to warrant the detention

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of Mr. Justice Johnson, and feel a confident hope that he will be discharged.

Mr. Curran.—My Lords;—It has fallen to my lot, either fortunately, or unfortunately, as the event may be, to rise as counsel for my client on this most important and momentous occasion. I appear before you, my lords, in consequence of a writ issued by his majesty, commanding that cause be shown to this his Court why his subject has been deprived of his liberty; and upon the cause shown in obedience to this writ, it is my duty to address you on the most awful question—*if awfulness is to be judged by consequences and events—on which you have been ever called upon to decide.* Sorry am I that the task has not been confided to more adequate powers; but, feeble as mine are, they will at least not shrink from it. I move you therefore that Mr. Justice Johnson be released from illegal imprisonment.

I cannot but observe the sort of scenic preparation with which this sad drama is sought to be brought forward. In part I approve it; in part it excites my disgust and indignation. I am glad to find that the Attorney and Solicitor-general, the natural and official prosecutors for the state, do not appear; and I infer from their absence that his excellency the lord-lieutenant disclaims any personal concern in this execrable transaction. I think it does him much honour;—it is a conduct that equally accords with the dignity of his character, and the feelings of his heart. To his private virtues, whenever he is left to their influence, I willingly concur in giving the most unqualified tribute of respect: and I do firmly believe, it is with no small regret that he suffers his name to be even formally made use of, in avowing for a return of one of the judges of the land, with as much indifference and *non-chalance* as if he were a beast of the plough. I observe too, the dead silence into which the public is frowned by authority for the sad occasion. No man dares to mutter; no newspaper dares to whisper that such a question is afloat. It seems an inquiry among the tombs, or rather in the shades beyond them.

*Ibant solâ sub nocte per umbram.*

I am glad it is so—I am glad of this factitious dumbness; for if murmurs dared to become audible, my voice would be too feeble to drown them; but when all is hushed—when nature sleeps—

*Cum quies mortalibus ægris,*

the weakest voice is heard;—the shepherd's whistle shoots across the listening darkness of the interminable heath, and gives notice that the wolf is upon his walk; and the same gloom and stillness that tempt the monster to come abroad, facilitate the communication of the warning to beware. Yes, through that silence the voice shall be heard;—yes, through



that silence the shepherd shall be put upon his guard;—yes, through that silence shall the felon savage be chased into the toil. Yes, my lords, I feel myself impressed and cheered by the composed and dignified attention with which I see you are disposed to hear me on the most important question that has ever been subjected to your consideration; the most important to the dearest rights of the human being; the most deeply interesting and animating that can beat in his heart, or burn upon his tongue.—Oh! how recreating is it to feel that occasions may arise in which the soul of man may resume her pretensions; in which she hears the voice of nature whisper to her, *os homini sublime dedit calumque tueri*; in which even I can look up with calm security to the Court, and down with the most profound contempt upon the reptile I mean to tread upon! I say, reptile; because, when the proudest man in society becomes so much the dupe of his childish malice, as to wish to inflict on the object of his vengeance the poison of his sting; to do a reptile's work he must shrink into a reptile's dimension; and so shrunk, the only way to assail him is to tread upon him. But to the subject:—this writ of Habeas Corpus has had a return. That return states, that lord Ellenborough, chief justice of England, issued a warrant reciting the foundation of this dismal transaction; that one of the clerks of the Crown-office had certified to him, that an indictment had been found at Westminster, charging the honourable Robert Johnson, late of Westminster, one of the justices of his majesty's Court of Common-pleas in Ireland, with the publication of certain slanderous libels against the government of that country; against the person of his excellency lord Hardwicke, lord-lieutenant of that country; against the person of lord Redesdale, the chancellor of Ireland; and against the person of Mr. Justice Osborne, one of the justices of the Court of King's Bench in Ireland. One of the clerks of the Crown-office, it seems, certified all this to his lordship. How many of those there are, or who they are, or which of them so certified, we cannot presume to guess, because the learned and noble lord is silent as to those circumstances. We are only informed that one of them made that important communication to his lordship. It puts me in mind of the information given to one of Fielding's justices; "did not," says his worship's wife, "the man with the *valet* make his *fidavy* that you was a *vagram*?" I suppose it was some such petty-bag officer who gave lord Ellenborough to understand that Mr. Justice Johnson was indicted. And being thus given to understand and be informed, he issued his warrant to a gentleman, no doubt of great respectability, a Mr. Williams, his tipstaff, to take the body of Mr. Justice Johnson and bring him before a magistrate, for the purpose of giving bail to appear within the first eight days of this term, so that there might be a trial with-

in the sittings after; and if, by the blessing of God, he should be convicted, then to appear on the return of the *postea*, to be dealt with according to law.

Perhaps it may be a question for you to decide, whether that warrant, such as it may be, is not now absolutely spent; and, if not, how a man can contrive to be hereafter in England on a day that is past? And high as the opinion may be in England of Irish understanding, it will be something beyond even Irish exactness to bind him to appear in England, not a fortnight hence, but a fortnight ago.—I wish, my lords, we had the art of giving time this retrograde motion. If possessed of the secret, we might possibly be disposed to improve it from fortnights into years.

There is something not incurious in the juxta-position of signatures. The warrant is signed by the chief justice of all England.—In music the ear is reconciled to strong transitions of key by a preparatory resolution of the intervening discords; but here, alas! there is nothing to break the fall: the august title of Ellenborough is followed by the unadorned name of brother Bell, the sponsor of his lordship's warrant. Let me not, however, be suffered to deem lightly of the compeer of the noble and learned lord. Mr. Justice Bell ought to be a lawyer; I remember him myself long a crier to, and I know his credit with, the state; he has had a *noli prosequi*. I see not therefore why it may not be fairly said "*fortunati ambo!*" It appears by this return, that Mr. Justice Bell endorses this bill of lading to another consignee, Mr. Medlicott, a most respectable gentleman; he describes himself upon the warrant, and he gives a delightful specimen of the administration of justice, and the calender of saints in office; he describes himself a justice and a peace officer—that is a magistrate and a catch-pole:—So that he may receive informations as a justice; if he can write, he may draw them as a clerk; if not, he can execute the warrant as bailiff; and, if it be a capital offence, you may see the culprit, the justice, the clerk, the bailiff and the hangman together in the same cart; and, though he may not write, he may "ride and tie!" What a pity that their journey should not be further continued together! That, as they had been "lovely in their lives, so in their deaths they might not be divided!" I find, my lords, I have undesignedly raised a laugh; never did I less feel merriment.—Let not me be condemned—let not the laugh be mistaken.—Never was Mr. Hume more just than when he says, that "in many things the extremes are nearer to one another than the means."—Few are those events that are produced by vice and folly, that fire the heart with indignation, that do not also shake the sides with laughter. So when the two famous moralists of old beheld the sad spectacle of life, the one burst into laughter, the other melted into tears: they were each of them right, and equally right.



*Si credas utrique*

*Res sunt humanæ flebile ludibrium.*

But these are the bitter ireful laughs of honest indignation,—or they are the laughs of hectic melancholy despair.

It is stated to you, my lords, that these two justices, if justices they are to be called, went to the house of the defendant. I am speaking to judges, but I disdain the paltry insult it would be to them, were I to appeal to any wretched sympathy of situation. I feel I am above it. I know the Bench is above it. But I know, too, that there are ranks, and degrees, and decorums to be observed; and, if I had a harsh communication to make to a venerable judge, and a similar one to his crier, I should certainly address them in very different language indeed. A judge of the land, a man not young, of infirm health, has the sanctuary of his habitation broken open by these two persons, who set out with him for the coast, to drag him from his country, to hurry him to a strange land by the “most direct way!” till the king’s writ stopped the malefactors, and left the subject of the king a waife dropt in the pursuit.

Is it for nothing, my lords, I say this? Is it without intention I state the facts in this way? It is with every intention. It is the duty of the public advocate not so to put forward the object of public attention as that the skeleton only shall appear, without flesh, or feature, or complexion. I mean every thing that ought to be meant in a court of justice. I mean not only that this execrable attempt shall be intelligible to the Court as a matter of *law*, but shall be understood by the world as an act of *state*. If advocates had always the honesty and the courage, upon occasions like this, to despise all personal considerations, and to think of no consequence but what may result to the public from the faithful discharge of their sacred trust, these phrenetic projects of power, these atrocious aggressions on the liberty and happiness of men, would not be so often attempted; for, though a certain class of delinquents may be skreened from punishment, they cannot be protected from hatred and derision. The great tribunal of reputation will pass its inexorable sentence upon their crimes, their follies, or their incompetency; they will sink themselves under the consciousness of their situation; they will feel the operation of an acid so neutralizing the malignity of their natures, as at least to make them harmless, if it cannot make them honest. Nor is there any thing of risk in the conduct I recommend. If the fire be hot, or the window cold, turn not your back to either; turn your face. So, if you are obliged to arraign the acts of those in high station, approach them not with malice nor favour, nor fear. Remember, that it is the condition of guilt to tremble, and of honesty to be bold; remember that your false fear

can only give them false courage:—that while you nobly avow the cause of truth, you will find her shield an impenetrable protection; and that no attack can be either hazardous or inefficient, if it be just and resolute. If Nathan had not fortified himself in the boldness and directness of his charge, he might have been hanged for the malice of his parable.

It is, my lords, in this temper of mind, befitting every advocate who is worthy of the name, deeply and modestly sensible of his duty, and proud of his privilege, equally exalted above the meanness of temporising or of offending, most averse from the unnecessary infliction of pain upon any man or men whatsoever, that I now address you on a question, the most vitally connected with the liberty and well-being of every man within the limits of the British empire; which being decided one way, he may be a freeman; which being decided the other, he must be a slave. It is not the Irish nation only that is involved in this question: every member of the three realms is equally embarked; and would to God all England could listen to what passes here this day! they would regard us with more sympathy and respect, when the proudest Briton saw that his liberty was defended in what he would call a provincial court, and by a provincial advocate. The abstract and general question for your consideration is this:—my lord Ellenborough has signed with his own hand a warrant, which has been indorsed by Mr. Bell an Irish justice, for seizing the person of Mr. Justice Johnson in Ireland, for conveying his person by the most direct way, in such manner as these bailiffs may choose, across the sea, and afterwards to the city of Westminster, to take his trial for an alleged libel against the persons entrusted with the government of Ireland, and to take that trial in a country where the supposed offender did not live at the time of the supposed offence, nor during a period of at least eighteen months previous thereto has ever resided; where the subject of his accusation is perfectly unknown; where the conduct of his prosecutors, which has been the subject of the supposed libel, is equally unknown; where he has not the power of compelling the attendance of a single witness for his defence. Under that warrant he has been dragged from his family; under that warrant he was on his way to the water’s edge: his transportation has been interrupted by the writ before you, and upon the return of that writ arises the question upon which you are to decide, the legality or illegality of so transporting him for the purpose of trial. I am well aware, my lords, of the limits of the present discussion; if the law were clear in favour of the prosecutors, a most momentous question might arise—how far they may be delinquents in daring to avail themselves of such a law for such a purpose?—but I am aware that such is not the present question.



I am aware that this is no court of impeachment; and therefore that your inquiry is, not whether such a power hath been criminally used, but whether it doth in fact exist. The arrest of the defendant has been justified by the advocates of the crown under the forty-fourth of his present majesty. I have had the curiosity to inquire into the history of that act, and I find, that in the month of May, 1804, the brother-in-law of one of the present prosecutors obtained leave to bring in a bill to "render more easy the apprehending and bringing to trial offenders escaping from one part of the united kingdom to another, and also from one county to another:" that bill was brought in; it travelled on in the caravan of legislation unheeded and unnoticed, retarded by no difficulties of discussion or debate, and in due fulness of season it passed into a law, which was to commence from and after the 1st of August, 1804. This act, like a young Hercules, began its exploits in the cradle. In the November following the present warrant was issued under its supposed authority. Let me not be understood to say, that the act has been slid through an unsuspecting legislature, under any particular influence, or for any particular purpose: that any such man could be found, or any such influence exist, or any such lethargy prevail, would not, perhaps, be decent to suppose; still less do I question the legislative authority of parliament. We all know that a parliament may attain itself; and that its omnipotence may equally extend in the same way to the whole body of the people. We know also that most unjust and cruel acts of attainder have been obtained by corrupt men in bad times; and if I could bring myself to say, which I do not, that this act was contrived for the mere purpose of destroying an obnoxious individual, I should not hesitate to call it the most odious species of attainder that could be found upon the records of legislative degradation; because, for the simple purpose of extinguishing an individual, it would sweep the liberty of every being in the state into the vortex of general and undistinguishing destruction. These are points of view upon which the minds of the people of Ireland and England may dwell with terror, or indignation, or apathy, according as they may be fitted for liberty or for chains; but they are not points for the court; and so I pass them by. The present arrest and detention are defended under the forty-fourth of the king: are they warranted by that act? That is the only question for you to decide; and you will arrive at that decision in the usual course, by inquiring, first, how the law stood before upon the subject; next, what the imperfection or grievance of that law was; and thirdly what is the remedy intended to be applied by the act in question?

First, then, how stood the law before?—upon this part it would be a parade of useless

learning to go farther back than the statute of Charles, the Habeas Corpus act, which is so justly called the second Magna Charta of British liberty: what was the occasion of the law? the arbitrary transportation of the subject beyond the realm; that base and malignant war, which the odious and despicable minions of power are for ever ready to wage against all those who are honest and bold enough to despise, to expose, and to resist them. Such is the oscitancy of man, that he lies torpid for ages under these aggressions, until at last some signal abuse, the violation of Lucretia, the death of Virginia, the oppression of William Tell, shakes him from his slumber. For years had those drunken gambols of power been played in England; for years had the waters of bitterness been rising to the brim; at last a single drop caused them to overflow—the oppression of a single individual raised the people of England from their sleep. And what does that great statute do? It defines and asserts the right, it points out the abuse; and it endeavours to secure the right, and to guard against the abuse, by giving redress to the sufferer, and by punishing the offender. For years had it been the practice to transport obnoxious persons out of the realm into distant parts under the pretext of punishment, or of safe custody. Well might they have been said to be sent "to that undiscovered country from whose bourne no traveller returns," for of these wretched travellers how few ever did return? But of that flagrant abuse this statute has laid the axe to the root: it prohibits the abuse; it declares such detention or removal illegal; it gives an action against all persons concerned in the offence, by contriving, writing, signing, counter-signing, such warrant, or advising or assisting therein. That you may form a just estimate of the rights which were to be secured, examine the means by which the infringement was in future to be prevented and punished. The injured party has a civil action against the offenders; but the legislature recollected, that the sneaking unprincipled humility of a servile packed jury might do homage to ministerial power by compensating the individual with nominal damages. The statute does that of which I remember no other instance: it leaves the jury at liberty to give damages to any extent, above five hundred pounds, but expressly forbids them to find a verdict of damages below it. Was this sufficient?—No. The offenders incur a *præmunire*. They are put out of the king's protection; they forfeit their lands and goods; they are disabled from bearing any office of trust or profit. Did the statute stop there? The legislature saw in their prospective wisdom, that the profligate favourite who had committed treason against the king by the oppression of his subjects, might acquire such a dominion over the mind of his master, as by the exertion of prerogative to interrupt the course of justice, and prevent the punishment



of his crime; if therefore the guilty minister of such abuse should attempt to pour poison into the sovereign's ear, and talk to him of mercy, this statute dashes the phial from his hand—it takes away the prerogative of pardon.—Are bulwarks like these ever constructed to repel the incursions of a contemptible enemy? Was it a trivial and ordinary occasion which raised this storm of indignation in the parliament of that day? Is the ocean ever lashed by the tempest to waft a feather, or to drown a fly? Thus, haughtily and jealously, does this statute restrain the abuses that may be committed against the liberty of the subject by the judge, the jury, or the minister. One exception, and one exception only does it contain:—It excepts from its protection by the sixteenth section, persons who may have committed any “capital offence” in Scotland or Ireland. If the principle of that exception were now open to discussion, sure I am that much might be said against its policy. On the one side, you would have to consider the mischief of letting this statute protect a capital offender from punishment, by prohibiting his transmission to that jurisdiction where his crime was committed, and where alone he could be tried. On the other, you would have to weigh the danger to be feared from the abuse of such a power, which, as the Habeas Corpus act stood, could not be resorted to in any ordinary way; but was confined to the sole and exclusive exercise of the advisers of the prerogative. You would have to consider whether it was more likely that it would be used against the guilty or the obnoxious; whether it was more likely to be used as an instrument of justice against the bad, or a pretext of oppression against the good; and finally, whether you might not apply to the subject the humane maxim of our law—that better it is that one hundred guilty men should escape, than that one innocent, and, let me add, meritorious man, should suffer. But our ancestors have considered the question; they have decided; and, until we are better satisfied than I fear we can be, that we have not degenerated from their virtue, it can scarcely become us to pass any light or hasty condemnation upon their wisdom. In this great statute then, my lords, you have the line of demarcation between the prerogative and the people, as well as between the criminal law and the subject, defined with all the exactness, and guarded by every precaution that human prudence could devise. Wretched must be that legislature whose acts you cannot trace to the first unchangeable principles of rational prerogative, of civil liberty, of equal justice! In this act you trace them all distinctly. By this act you have a solemn legislative declaration, “that it is incompatible with liberty to send any subject out of the realm, under pretence of any crime supposed or alleged to be committed in a foreign jurisdiction, except that crime be capital.” Such were the bulwarks which our ancestors placed

about the sacred temple of liberty—such the ramparts by which they sought to bar out the ever-toiling ocean of arbitrary power; and thought (generous credulity!) that they had barred it out from their posterity for ever. Little did they foresee the future race of vermin that would work their way through those mounds, and let back the inundation; little did they foresee that their labours were so like those frail and transient works that threatened for a while the haughty crimes and battlements of Troy, but so soon vanished before the force of the trident and the impulse of the waters; or that they were still more like the forms which the infant's finger traces upon the beach; the next breeze, the next tide erases them, and confounds them with the barren undistinguished strand. The ill-omened bird that lights upon it sees nothing to mark, to allure, or to deter, but finds all one obliterated unvaried waste;

*Et sola secum sicca spatatur arena.*

Still do I hope that this sacred bequest of our ancestors will have a more prosperous fortune, and be preserved by a more religious and successful care, a polar star to the wisdom of the legislator, and the integrity of the judge.

As such will I suppose its principle not yet brought into disgrace; and as such, with your permission, will I still presume to argue upon that principle.

So stood the law till the two acts of the twenty-third and twenty-fourth of George 2nd which relate wholly to cases between county and county in England. Next followed the act of the thirteenth of his present majesty, which was merely a regulation between England and Scotland. And next came the act of the forty-fourth of the present reign, upon which you are now called on to decide, which as between county and county is an incorporation of the two acts of George 2nd: and as between England, Scotland, and Ireland is nearly a transcript of the thirteenth of the king.

Under the third and fourth sections of this last act the learned counsel for the learned prosecutors (for really I think it only candid to acquit the lord-lieutenant of the folly or the shame of this business, and to suppose that he is as innocent of the project from his temper, as he must from his education be ignorant of the subject) endeavour to justify this proceeding. The construction of this act they broadly and expressly contend to be this;—first, they assert that it extends not only to the higher crimes, but to all offences whatsoever: secondly, that it extends not only to persons who may have committed offences within any given jurisdictions, and afterwards escaped or gone out of such jurisdictions, but to all persons whether so escaping or going out or not:—thirdly, that it extends to constructive offences, that is, to offences committed against the laws of certain



jurisdictions, committed in places not within them, by persons who never put their feet within them, but by construction of law committing them within such jurisdictions, and of course triable therein:—fourthly, that it extends peculiarly to the case of libels against the persons entrusted with the powers of government, or with offices in the state—and fifthly, that it extends not only to offences committed after the commencement of the act, but also to offences at any period however remotely previous to the existence of the statute; that is, that it is to have an *ex post facto* operation. The learned prosecutors have been forced into the necessity of supporting these last monstrous positions, because upon the return to the writ, and upon the affidavits it appears, and has been expressly admitted in the argument:—first, that the supposed libel upon these noble and learned prosecutors relates to the unhappy circumstances that took place in Ireland on the twenty-third of July, 1803, and of course must have been published subsequently thereto:—and secondly, that Mr. Justice Johnson from the beginning of 1802 to the present hour was never for a moment in England, but was constantly resident in Ireland; so that his guilt, whatever it be, must arise from some act of necessity committed in Ireland, and by no physical possibility committed or capable of being committed in England: these are the positions upon which a learned chancellor and a learned judge come forward to support their cause, and to stake their character, each in the face of his country, and both in the face of the British empire: these are the positions, which, thank God, it belongs to my nature to abhor, and to my education to despise, and which it is this day my most prompt and melancholy duty to refute and to resist—most prompt in obeying; most grieved at the occasion that calls for such obedience.

We must now examine this act of the forty-fourth of the king, and in doing so I trust you will seek some nobler assistance than can be found in the principles or the practice, of day-rules or side-bar motions; something more worthy a liberal and learned Court, acting under a religious sense of their duty to their king, their country, and their God, than the feeble and pedantic aid of a stunted verbal interpretation, straining upon its tip-toe to peep over the syllable that stands between it and meaning. If your object were merely to see if its words could be tortured into a submission to a vindictive interpretation, you would have only to endorse the construction that these learned prosecutors have put upon it, and that with as much grave deliberation as Mr. Justice Bell has vouchsafed to endorse the warrant which my lord Ellenborough has thought fit to issue under its authority. You would then have only to look at it, *ut leguleius quidam cautus, atque acutus præcentor*.

Lord Avonmore.—No, Mr. Curran, you forget; it is not *præcentor*, it is *leguleius qui-*

*dam cautus atque acutus, præco actionum, cantor formarum, auceps syllabarum.*

Mr. Curran.—I thank you, my lord, for the assistance; and I am the more grateful, because, when I consider the laudable and successful efforts that have been made of late to make science domestic and familiar, and to emancipate her from the trammels of scholarship, as well as the just suspicion under which the harbourers and abettors of those outlawed classics have fallen, I see at what a risk you have ventured to help me out. And yet see, my lord, if you are prudent in trusting yourself to the honour of an accomplice. Think, should I be prosecuted for this misprision of learning, if I could resist the temptation of escaping by turning evidence against so notorious a delinquent as you, my good lord, and so confessedly more criminal than myself, or perhaps than any other man in the empire.

To examine this act then, my lords, we must revert to the three English statutes of which it is a transcript. The first of these is the twenty-third of George 2nd, cap. 26, sect. 11.

So much of the title as relates to our present inquiry is “for the apprehending of persons in any county or place upon warrants granted by justices of the peace in any other county or place.”

See now sect. 11, that contains the preamble and enactment as to this subject;—

“And whereas it frequently happens that persons, against whom warrants are granted by justices of the peace for the several counties within this kingdom, escape into other counties or places out of the jurisdiction of the justices of the peace granting such warrants, and thereby avoid being punished for the offences wherewith they are charged: For remedy whereof, be it enacted by the authority aforesaid, that from and after the twenty-fourth day of June, one thousand seven hundred and fifty, in case any person against whom a legal warrant shall be issued by any justice or justices of the peace for any county, riding, division, city, liberty, town or place, within this kingdom, shall escape or go into any other county, riding, division, city, liberty, town or place, out of the jurisdiction of the justice or justices granting such warrant as aforesaid, it shall and may be lawful for any justice of the peace of the county, riding, division, city, liberty, town or place, to which such person shall have gone or escaped, to endorse such warrant, upon application made to him for that purpose, and to cause the person against whom the same shall have been issued to be apprehended and sent to the justice or justices who granted such warrant, or some other justice or justices of the county, riding, division, city, liberty, town or place, from whence such person shall have gone or escaped, to the end that he or she may be dealt with according to law, any law or usage to the contrary notwithstanding.”



This act was amended by the twenty-fourth of the same reign, the title of which was, "An act for amending and making more effectual a clause in an act passed in the last session of parliament for the apprehending of persons in any county or place upon warrants granted by justices of the peace of any other county or place."

It then recites the eleventh section of the twenty-third of George 2nd, and proceeds, "And whereas such offender or offenders may reside or be in some other county, riding, division, city, liberty, town or place, out of the jurisdiction of the justice or justices granting such warrant, as aforesaid, before the granting such warrant, and without escaping or going out of the county, riding, division, city, liberty, town or place, after such warrant granted."

I shall reserve a more particular examination of these two acts for that head of my argument which will necessarily require it. At present, I shall only observe;—first, that they are manifestly prospective; secondly, that they operate only as between county and county in England; thirdly, that they clearly and distinctly go to all offenders whatsoever, who may avoid trial and punishment of their offences by escaping from the jurisdiction in which they were committed, and were of course triable and punishable; and fourthly, that provision is made for bailing the persons so arrested in the place where taken, if the offences charged upon them were bailable by law.

In the thirteenth of his present majesty it was thought fit to make a law with respect to criminals escaping from England to Scotland, and *vice versa*. Of that act the present statute of the forty-fourth is a transcript; and upon this statute arises the first question made by the prosecutors; namely, whether, like the acts of the twenty-third and twenty-fourth of George 2nd, which were merely between county and county, it extended indiscriminately to the lowest as well as the highest offences? or whether the thirteenth and forty-fourth which go to kingdom and kingdom, are not confined to some and to what particular species of offences? The preamble to these two statutes so far as they bear upon our present question is contained in the third section of the forty-fourth, the act now under consideration; and there is not a word in it that is not most material. It says, "whereas, it may frequently happen that felons and other malefactors in Ireland may make their escape into Great Britain, as also that felons and other malefactors in Great Britain may make their escape into Ireland, whereby their crimes remain unpunished, there being no sufficient provision by the laws now in force in Great Britain and Ireland respectively for apprehending such offenders and transmitting them into that part of the united kingdom in which their offences were committed: For remedy whereof, &c. if any person against whom a

warrant shall be issued by any justice of the peace in Ireland for any crime or offence against the laws of Ireland, shall escape, go into, reside or be, in any place in England or Scotland, it shall be lawful for any justice of the peace for the place, whither or where such person shall escape, &c. to endorse his name on such warrant; which warrant so endorsed shall be a sufficient authority to the person bringing it to execute the same by apprehending the person against whom it is granted, and to convey him by the most direct way into Ireland and before a justice living near the place where he shall land, which justice shall proceed with regard to him as if he had been legally apprehended in such county of Ireland."

The fourth section makes the same provision for escapes from England or Scotland into Ireland. The statute goes on and directs that the expenses of such removal, shall be repaid to the person defraying the same by the treasurer of the county in which the crime was committed, and the treasurer is to be allowed for it in his accounts.

To support the construction that takes in all possible offences of all possible degrees, you have been told—and upon the grave authority of notable cases—that the enacting part of a statute may go beyond its preamble; that it cannot be restrained by the preamble and still less by the title; that here the enacting clause has the words "any offence," and that "any offence" must extend to every offence, and of course to the offence in question. If the question had been of a lighter kind, you might perhaps have smiled at the parade of authorities produced to establish what no lawyer ever thinks of denying. The learned gentlemen would have acted with more advantage to the justice of the country, though perhaps not to the wishes of their clients, if they had reminded your lordships, that in the construction of a statute, the preamble and even the title itself may give some assistance to the judge in developing its meaning and its extent; if they had reminded you, that remedial laws are to be construed liberally, and penal laws with the utmost strictness and caution. And when they contended that a supposed libel is within the letter of this law, they would have done well to have added, that it is a maxim that there may be cases within the letter of a statute, which, notwithstanding, the judge is bound to reject from its operation as being incompatible with its spirit. They would have done well in adding that the judge is bound so to construe all laws as not to infringe upon any of the known rules of religion or morality—any of the known rules of distributive justice—any of the established principles of the liberties and rights of the subject—and that it is no more than a decent and becoming deference to the legislator to assume as certain, that whatever words he may have used, he could not possibly have meant any thing which upon the



face of it was palpably absurd, immoral, or unjust. These are the principles on which I am persuaded this Court will always act, because I know them to be the principles on which every court of justice ought to act. And I abstain studiously from appealing to any judicial decisions in support of them, because to fortify them by precedent or authority would be to suppose them liable to be called in question. There is another rule which I can easily excuse the learned gentlemen from adverting to, and that is, that when many statutes are made *in pari materia*, any one of them is to be construed, not independently of the others, but with a reference to the entire code of which it is only a component part.

On these grounds then, I say, the forty-fourth was not, and could not be intended to go to all offences whatsoever.

First, because the acts of the twenty-third, and twenty-fourth of George 2nd had already described "all persons" by words of the most general and comprehensive kind. If the framers of the thirteenth and forty-fourth meant to carry these acts to the same length, they had the words of the former acts before their eyes, and yet they have used very different words: a clear proof, in my mind, that they meant to convey a very different meaning. In these latter acts they use very singular words—"felons and other malefactors;"—that these words are somewhat loose and indefinite I make no difficulty of admitting: but will any man who understands English deny, that they describe offences of a higher and most enormous degree? You are told, that "felon" does not necessarily mean a capital offender, because there are felonies not capital, the name being derived from the forfeiture not of life, but of property. You are also told, that malefactor means generally an ill-doer, and, in that sense, that every offender is a malefactor; but the thirteenth and forty-fourth state this class to be felons and malefactors, for whose transmission from kingdom to kingdom "no sufficient provision was made by the laws now in force." Now I think it is not unfair reasoning to say, that this act extends to a class of offenders whose transmission was admitted to be not incompatible with the just liberty of the subject of England; but for whose transmission the legislature could not say there was *no* provision; but for whose transmission it was clear that there was not a *sufficient* provision, though there was some provision. If you can find any class so circumstanced, that is exclusively liable by law to be so transmitted, the meaning of the words "felons and other malefactors," becomes fixed, and must necessarily refer to such class.

Now that class is expressly described in the Habeas Corpus act, because it declares the transmission of all persons to be illegal, except only persons charged with capital crimes; for their apprehension and transmission there

was a provision, the *mandatum regis*; that is, the discretionary exercise of the prerogative. That power had therefore been used in cases of treason, as in Lundy's case: so in the case of lord Sanquire; Carliel, the principal in the murder of Turner, committed in London by the procurement of lord Sanquire, was arrested in Scotland whither he had fled, by the order of king James 1st, and brought back to England, where he was executed for the crime, as was lord Sanquire, the accessory before the fact; but such interference of the prerogative might be granted or withheld at pleasure, could be applied for only with great difficulty and expense, and therefore might well be called an insufficient provision. No provision for such a purpose can be sufficient, unless, instead of depending on the caprice of men in power, it can be resorted to in the ordinary course of law. You have therefore, my lords, to elect between two constructions; one which makes an adequate provision for carrying the exception in the sixteenth section of the habeas corpus act into effect; and the other, a complete and radical repeal of that sacred security for the freedom of Englishmen.—But further, the spirit and the letter of the Habeas Corpus law is, that the party arrested shall, without a moment's delay, be bailed, if the offence be bailable; but if misdemeanors are within this act, then an English subject, arrested under an Irish warrant, cannot be bailed within any part of the realm of England, but must be carried forward, in the custody of Irish bailiffs, to the sea-shore of his country, where he is to be embarked in such vessel as they think proper; and, if it should be the good pleasure of his guardians to let him land alive in any part of Ireland, then, and not till then, may he apply to an Irish justice to admit him to bail in a foreign country, where he is a perfect stranger, and where none but an idiot could expect to find any man disposed to make himself responsible for his appearance. Can you, my lords, bring your minds easily to believe that such a tissue of despotism and folly could have been the sober and deliberate intention of the legislature? but further, under the acts of George the 2nd, even from one county to the next, the warrant by the first justice must be authenticated upon oath, before it can be endorsed by the second; but, in this act, between, perhaps, the remotest regions of different kingdoms, no authentication is required; and, upon the endorsement of, perhaps, a forged warrant, which the English justice has no means of inquiring into, a British subject is to be marched through England, and carried over sea to Ireland, there to learn in the county of Kerry, or Galway, or Derry, that he had been torn from his family, his friends, his business, to the annihilation of his credit, the ruin of his affairs, the destruction of his health, in consequence of a mistake, or a practical joke, or an inhuman and remorseless project of vindictive malice;



and that he is then at liberty to return, if he is able; that he may have a good action at law against the worthy and responsible bailiff who abused him, if he is foolish enough to look for him, or unfortunate enough to find him. Can you, my lords, be brought seriously to believe, that such a construction would not be the foulest aspersion upon the wisdom and justice of the legislature?

I said, my lords, that an Englishman may be taken upon the endorsement of a forged warrant. Let me not be supposed to be such a simpleton as to think that the danger of forgery makes a shade of difference in the subject. I know too well that calendar of saints, the Irish justices; I am too much in the habit of prosecuting and defending them every term and every commission, not to be able to guess at what price a customer might have real warrants by the dozen; and, without much sagacity, we might calculate the average expense of their endorsement at the other side of the water. But, farther yet, the act provides that the expense of such transmission shall be paid at the end of the journey, by the place where the crime has been committed—but, who is to supply the expenses by the way? What sort of prosecutors do you think the more likely to advance those expenses, an angry minister, or a vindictive individual?—I can easily see that such a construction would furnish a most effectual method of getting rid of a troublesome political opponent; or a rival in trade; or a rival in love; or of quickening the undutiful lingering of an ancestor that felt not the maturity of his heir; but I cannot bring myself to believe that a sober legislature, when the common rights of humanity seem to be beaten into their last entrenchment, and to make their last stand,—I trust in God a successful one,—in the British empire, would choose exactly that awful crisis for destroying the most vital principles of common justice and liberty; or of showing to these nations, that their treasure and their blood were to be wasted in struggling for the noble privilege of holding the right of freedom, of habitation, and of country, at the courtesy of every little irritable officer of state, or of our worshipful Rivets, and Bells, and Medlicotts, and their trusty and well-beloved cousins and catchpoles.

But, my lords, even if the prosecutor should succeed,—which, for the honour and character of Ireland, I trust he cannot,—in wringing from the Bench an admission that all offences whatsoever are within this act, he will have only commenced his honourable cause, he will only have arrived at the vestibule of atrocity. He has now to show that Mr. Johnson is within the description of a malefactor, making his escape into Ireland, whereby his offence may remain unpunished, and liable to be arrested under a warrant endorsed in that place whither or where such person shall escape, go into, reside or be. For this inquiry

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you must refer to the twenty-third and twenty-fourth George 2nd. The first of these, twenty-third, c. 11, recites the mischief—“that persons against whom warrants are granted *escape* into other counties, and thereby avoid being punished.”—The enacting part then gives the remedy:—“The justice for the place into which *such* person shall have gone or escaped shall endorse the original warrant, and the person accused shall thereunder be sent to the justice who granted it, to be by him dealt with,” &c.

If words can be plain, these words are so—they extend to persons actually committing crimes within a jurisdiction, and actually escaping into some other after warrant granted, and thereby avoiding trial. In this act there were found two defects:—first, it did not comprehend persons changing their abode before warrant issued, and whose removing, as not being a direct flight from pursuit, could scarcely be called an escape;—secondly, it did not give the second justice a power to bail. And here you see how essential to justice it was deemed that the person arrested should be bailed on the spot, and at the moment of arrest, if the charge was bailable.

Accordingly, the twenty-fourth of George 2nd, cap. 55, was made:—After reciting the former act, and the class of offenders thereby described, namely, actual offenders actually escaping, it recites that “whereas *such* offenders may reside or be in some other county before the warrant granted, and without escaping or going out of the country after such warrant granted,” it then enacts, “that the justice for such place where such person shall escape, go into, reside, or be, shall endorse, &c. and may bail if bailable, or transmit,” &c.

Now the construction of these two acts taken together is manifestly this: it takes in every person, who being in any jurisdiction, and committing an offence therein, escaping after warrant, or without escaping after warrant, going into some other jurisdiction, and who shall there *reside*, that is, permanently abide, or shall *be*, that is, not permanently so as to be called a resident.

Now here it is admitted that Mr. Johnson was not within the realm of England since the beginning of 1802, more than a year before the offence existed; and therefore you are gravely called upon to say, that he is the person who made his escape from a place where he never was, and into a place which he had never left.—To let in this wise and humane construction, see what you are called upon to do:—the statute makes such persons liable to arrest if they shall have done certain things, to wit, if they shall escape, go into, reside, or be; but if the fact of simply being, *i. e.* existing in another jurisdiction, is sufficient to make them so liable, it follows of course, that the two only verbs that imply doing any thing, that is, *escape* or *go into* must be regarded as superfluous, that is, that

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the legislature had no idea whatsoever to be conveyed by them when they used them, and therefore are to be altogether expunged and rejected.

Such, my lords, are the strange and unnatural monsters that may be produced by the union of malignity and folly. I cannot but own that I feel an indignant, and perhaps ill-natured satisfaction in reflecting that my own country cannot monopolize the derision and detestation that such a production must attract. It was originally conceived by the wisdom of the east; it has made its *escape* and *come into* Ireland under the sanction of the first criminal judge of the empire: here, I trust in God, we shall have only to feel shame or anger at the insolence of the visit; without the melancholy aggravation of such an execrable guest continuing *to reside* or *to be* among us. On the contrary, I will not dismiss from my heart, the cheering expectation, that your decision, my lords, will show the British nation, that a country, having as just and as proud an idea of liberty as herself, is not an unworthy ally in the great contest for the rights of humanity; is no unworthy associate in resisting the progress of barbarity and military despotism, and in defending against its enemies, that great system of British freedom, in which we have now a common interest, and under the ruins of which, if it should be overthrown, we must be buried in a common destruction.

I am not ignorant, my lords, that this extraordinary construction has received the sanction of another Court, nor of the surprise and dismay with which it smote upon the general heart of the bar. I am aware that I may have the mortification of being told in another country of that unhappy decision, and I foresee in what confusion I shall hang down my head when I am told it. But I cherish, too, the consolatory hope, that I shall be able to tell them, that I had an old and learned friend, whom I would put above all the sweepings of their hall, who was of a different opinion—who had derived his ideas of civil liberty from the purest fountains of Athens and of Rome—who had fed the youthful vigour of his studious mind with the theoretic knowledge of their wisest philosophers and statesmen—and who had refined that theory into the quick and exquisite sensibility of moral instinct, by contemplating the practice of their most illustrious examples—by dwelling on the sweet soul'd piety of Cimon—on the anticipated christianity of Socrates—on the gallant and pathetic patriotism of Epaminondas—on that pure austerity of Fabricius, whom to move from his integrity would have been more difficult than to have pushed the sun from his course. I would add, that if he had seemed to hesitate, it was but for a moment—that his hesitation was like the passing cloud that floats across the morning sun, and hides it from the view, and does so for a moment hide it, by involving the spec-

tator without even approaching the face of the luminary. And this soothing hope I draw from the dearest and tenderest recollections of my life—from the remembrance of those attic nights, and those reflections of the gods, which we have partaken with those admired, and respected, and beloved companions, who have gone before us;—over whose ashes the most precious tears of Ireland have been shed [Here lord Avonmore could not refrain from bursting into tears.] Yes, my good lord, I see you do not forget them; I see their sacred forms passing in sad review before your memory; I see your pained and softened fancy recalling those happy meetings, where the innocent enjoyment of social mirth became expanded into the nobler warmth of social virtue, and the horizon of the board became enlarged into the horizon of man—where the swelling heart conceived and communicated the pure and generous purpose—where my slenderer and younger taper imbibed its borrowed light from the more matured and redundant fountain of yours. Yes, my lord, we can remember those nights without any other regret than that they can never more return, for

“We spent them not in toys, or lust, or wine;  
“But search of deep philosophy,  
“Wit, eloquence, and poesy,  
“Arts, which I lov'd, for they, my friend,\* were  
thine.”

But, my lords, to return to a subject from which to have thus far departed, I think, may not be wholly without excuse. The express object of the forty-fourth was to send persons *from* places where they were not triable by law, back to the places that had jurisdiction to try them. And in those very words does Mr. Justice Blackstone observe on the thirteenth of the king, that it was made to prevent impunity by escape, by giving a power of “sending back” such offenders as had so escaped.

This topic of argument would now naturally claim its place in the present discussion. I mention it now, that it might not be supposed that I meant to pretermitt so important a consideration. And I only mention it, because it will connect itself with a subsequent head of this inquiry in a manner

\* “Lord Avonmore, in whose breast political resentment was easily subdued, by the same noble tenderness of feeling which distinguished the late Mr. Fox, upon a more celebrated occasion, could not withstand this appeal to his heart. At this period, there was a suspension of intercourse between him and Mr. Curran; but the moment the Court rose, his lordship sent for his friend, and threw himself into his arms, declaring that unworthy artifices had been used to separate them, and that they should never succeed in future.” 1. *Life of Curran* by his Son, 148, note.



more forcibly applicable to the object, when I think I may venture to say, it will appear to demonstration, that if the offence charged upon the defendant is triable at all, it is triable in Ireland and no where else; and of course that the prosecutors are acting in direct violation of the statute, when they seek to transport him from a place where he can be tried, into another country which can have no possible jurisdiction over him.

Let us now, my lords, examine the next position contended for by those learned prosecutors. Having laboured to prove that the act applies not merely to capital crimes, but to all offences whatsoever; having laboured to show that an act for preventing impunity by escape extends to cases not only where there was no escape, but where escape in fact was physically impossible; they proceeded to put forward boldly a doctrine which no lawyer, I do not hesitate to say it, in Westminster-hall would have the folly or the temerity to advance; that is, that the defendant may by construction of law be guilty of the offence in Westminster, though he should never have passed within its limits till he was sent thither to be tried. With what a fatal and inexorable uniformity do the tempers and characters of men domineer over their actions and conduct! How clearly must an Englishman, if by chance there be any now listening to us, discern the motives and principles that dictated the odious persecutions of 1794 re-assuming their operations; forgetting that public spirit by which they were frustrated; unappalled by fear, undeterred by shame, and returning again to the charge; the same wild and impious nonsense of constructive criminality, the same execrable application of the ill-understood rules of a vulgar, clerk-like, and illiterate equity, to the sound and plain and guarded maxims of the criminal law of England! the purest, the noblest, the chastest system of distributive justice that was ever venerated by the wise, or perverted by the foolish, or that the children of men in any age or climate of the world have ever yet beheld; the same instruments, the same movements, the same artists, the same doctrines, the same doctors, the same servile and infuriated contempt of humanity, and persecution of freedom! the same shadows of the varying hour that extend or contract their length, as the beam of a rising or a sinking sun plays upon the gnomon of self-interest! How demonstratively does the same appetite for mice authenticate the identity of the transformed princess that had been once a cat.

But it seems as if the whole order and arrangement of the moral and the physical world had been contrived for the instruction of man, and to warn him that he is not immortal. In every age, in every country, do we see the natural rise, advancement and decline of virtue and of science. So it has been in Greece, in Rome; so it must be, I fear, the

fate of England. In science, the point of its maturity and manhood is the commencement of its old age; the race of writers and thinkers, and reasoners passes away, and gives place to a succession of men who can neither write, nor think, nor reason. The Hales, the Holts, and the Sommerses shed a transient light upon mankind, but are soon extinct and disappear, and give place to a superficial and over-weening generation of laborious and strenuous idlers,—of silly scholiasts, of wrangling mooters, of prosing garrulists who explore their darkling ascent upon the steps of science by the balustrade of cases and manuscripts, who calculate their depth by their darkness, and fancy they are profound because they feel they are perplexed. When the race of the Palladios is extinct, you may expect to see a clumsy hod-man collected beneath the shade of his shoulders

“*αὐτὸς ἤνυστε μέγας τε*  
*Εξοχος ἀνθρώπων κεφαλὴν καὶ εὐρείας ὤμους,*”

affecting to fling a builder's glance upon the temple, on the proportion of its pillars, and to pass a critic's judgment on the doctrine that should be preached within them.

Let it not, my lords, be considered amiss, that I take this up as an English rather than an Irish question. It is not merely because we have no Habeas Corpus law in existence (the antiquary may read of it, though we do not enjoy it)—it is not merely because my mind refuses itself to the delusion of imaginary freedom, and shrinks from the meanness of affecting an indignant haughtiness of spirit that belongs not to our condition, that I am disposed to argue it as an English question; but it is because I am aware that we have now a community of interest and of destiny that we never had before—because I am aware, that blended as we now are, the liberty of man must fall where it is highest, or rise where it is lowest, till it finds its common level in the common empire—and because, also, I wish that Englishmen may see, that we are conscious that nothing but mutual benevolence and sympathy can support the common interest that should bind us against the external or the intestine foe; and that we are willing, whenever that common interest is attacked, to make an honest and animated resistance, as in a common cause, and with as cordial and tender an anxiety for their safety as for our own.

Let me now briefly, because no subject can be shorter or plainer, consider the principle of local jurisdictions, and constructive crimes:

A man is bound to obedience, and punishable for disobedience of laws: first, because by living within their jurisdiction he avails himself of their protection; and this is no more than the reciprocity of protection and allegiance on a narrower scale—and secondly, because, by so living within their jurisdiction, he has the means of knowing them, and cannot be excused because of his ignorance of



them. I should be glad to know, upon the authority of what manuscript, of what pocket-case, the soundness of these principles can be disputed? I should be glad to know upon what known principle of English law, a Chinese, or a Laplander, can be kidnapped into England, and arraigned for a crime which he committed under the pole, to the injury of a country which he had never seen—in violation of a law which he had never known, and to which he could not owe obedience—and, perhaps, for an act, the non-performance of which might have forfeited his liberty or his life to the laws of that country which he was bound to know, and was bound to obey. Very differently did our ancestors think of that subject;—they thought it essential to justice, that the jurisdiction of criminal law should be local and defined—that no man should be triable but there, where he was accused of having actually committed the offence; where the character of the prosecutor, where his own character was known, as well as the characters of the witnesses produced against him; and where he had the authority of legal process to enforce the attendance of witnesses for his defence. They were too simple to know any thing of the equity of criminal law. Poor Bracton or Fleta would have stared if you had asked them, “What, gentlemen, do you mean to say that such a crime as this shall escape from punishment?” Their answer would have been, no doubt, very simple and very foolish; they would have said, “We know there are many actions that we think bad actions, which yet are not punishable, because not triable by law; and which are not triable, because of the local limits of criminal jurisdictions.” And, my lords, to show with what a religious scrupulosity the locality of jurisdictions was observed, you have an instance in the most odious of all offences—treason only excepted—I mean the crime of wilful murder. By the common law, if a man in one county procured a murder to be committed, which was afterwards actually committed in another, such procurer could not be tried in either jurisdiction, because the crime was not completed in either. This defect was remedied by the act of Edward 6th, which made the author of the crime amenable to justice: but in what jurisdiction did it make him amenable? was it there where the murder was actually perpetrated? by no means, but there only where he had been guilty of the procurement, and where alone his accessorial offence was completed. And here you have the authority of parliament for this abstract position, that where a man living in one jurisdiction does an act, in consequence of which a crime is committed within another jurisdiction, he is by law triable only where his own personal act of procurement was committed, and not there where the procured or projected crime actually took effect. In answer to these known authorities of common law, has any

statute, has a single decision or even dictum of a court been adduced? Or, in an age in which the pastry-cooks and snuff-shops have been defrauded of their natural right to these compositions that may be useful without being read, has even a single manuscript been offered to show the researches of these learned prosecutors, or to support their cause? No, my lords; there has not.

I said, my lords, that this was a fruit from the same tree that produced the stupid and wicked prosecutions of 1794: let me not be supposed to say it is a mere repetition of that attempt, without any additional aggravation. In 1794, the design—and odious enough it was—was confined to the doctrine of constructive guilt; but it did not venture upon the atrocious outrage of a substituted jurisdiction; the Englishman was tried on English ground, where he was known, where he could procure his witnesses, where he had lived, and where he was accused of a crime, whether actual or constructive; but the locality of the trial defeated the infernal malice of those prosecutions. The speeches of half the natural day, where every jury-man had his hour, were the knell of sleep, but they were not the knell of death. The project was exposed, and the destined victims were saved. A piece so damned could not safely be produced again on the same stage. It was thought wise, therefore, to let some little time pass, and then to let its author produce it on some distant provincial theatre for his own benefit, and at his own expense and hazard. To drag an English judge from his bench, or an English member of parliament from the senate, and in the open day, in the city of London, to strap him to the roof of a mail-coach, or pack him up in a waggon, or hand him over to an Irish bailiff, with a rope tied about his leg, to be goaded forward like an ox, on his way to Ireland, to be there tried for a constructive misdemeanor, would be an experiment, perhaps, not very safe to be attempted. These Merlins, therefore, thought it prudent to change the scene of their sorcery;

*Modo Romæ, modo ponit Athenis!*

The people of England might, perhaps, enter into the feelings of such an exhibition with an officiousness of sympathy, not altogether for the benefit of the contrivers—

*Nec coram populo natos Medea trucidet—*

and it was thought wise to try the second production before spectators whose necks were pliant, and whose hearts were broken—where every man who dared to refuse his worship to the golden calf, would have the furnace before his eyes, and think that it was at once useless and dangerous to speak, and discreet at least, if it was not honest, to be silent—I cannot deny that it was prudent to try an experiment which, if successful, must reduce an Englishman to a state of slavery more abject and forlorn than that of



the helots of Sparta, or the negroes of your plantations—for see, my lords, the extent of the construction now broadly and directly contended for at your bar:—The king's peace in Ireland, it seems, is distinct from his peace in England, and both are distinct from his peace in Scotland; and of course the same act may be a crime against each distinct peace, and severally and successively punishable in each country—so much more inveterate is the criminality of a constructive than of an actual offence. So that the same man for the same act against laws that he never heard of may be punished in Ireland, be then sent to England by virtue of the warrant of Mr. Justice Bell, endorsed by my lord Ellenborough; and after having his health, his hopes, and his property destroyed for his constructive offences against his majesty's peace in Ireland, and his majesty's peace in England, he may find that his majesty's peace in the Orkneys has after all, a vested remainder in his carcass; and, if it be the case of a libel, for the full time and term of fourteen years from the day of his conviction before the Scottish jurisdiction, to be fully completed and determined. Is there, my lords, can there be a man who hears me, that does not feel that such a construction of such a law would put every individual in society under the despotical dominion, would reduce him to be the despicable chattel, of those most likely to abuse their power, the profligate of the higher, and the abandoned of the lower orders? to the remorseless malice of a vindictive minister, to the servile instrumentality of a trading justice?—Can any man who hears me conceive any possible case of abduction, of rape or of murder, that may not be perpetrated, under the construction now shamelessly put forward?—Let us suppose a case: By this construction a person in England, by procuring a misdemeanor to be committed in Ireland, is constructively guilty in Ireland, and, of course, triable in Ireland—let us suppose that Mr. Justice Bell receives, or says here receives information, that the lady of an English nobleman wrote a letter to an Irish chambermaid, counselling her to steal a row of pins from an Irish pedlar, and that the said row of pins was, in consequence of such advice and counsel, actually stolen, against the Irish peace of our lord the king; suppose my lord Ellenborough, knowing the signature, and reverencing the virtue of his tried and valued colleague, endorses this warrant; is it not clear as the sun that this English lady may, in the dead of night be taken out of her bed, and surrendered to the mercy of two or three Irish bailiffs, if the captain who employed them should happen to be engaged in any contemporary adventure nearer to his heart, without the possibility of any legal authority interposing to save her, to be matronized in a journey by land, and a voyage by sea, by such modest and respectable guardians, to be dealt with during the journey as her companions might think

proper—and to be dealt with afterwards by the worshipful correspondent of the noble and learned lord, Mr. Justice Bell, according to law?—I can without much difficulty, my lords, imagine, that after a year or two had been spent in accounts current, in drawing and redrawing for human flesh, between our worthy Bells and Medlicotts on this side of the water, and their noble or their ignoble correspondents on the other, they might meet to settle their accounts, and adjust their balances; I can conceive that the items might not be wholly destitute of curiosity:—Brother B. I take credit for the body of an English patriot.—Brother E. I set off against it that of an Irish judge.—Brother B. I charge you in account with three English bishops.—Brother E. I set off Mrs. Mac Lane and two of her chickens; petticoat against petticoat.—Brother B. I have sent you the body of a most intractable disturber, a fellow that has had the impudence to give a threshing to Buonaparté himself; I have sent you Sir Sidney.—Dearest brother E.—But I see my learned opponents smile—I see their meaning.—I may be told that I am putting imaginary and ludicrous, but not probable, and therefore, not supposable cases; but I answer, that reasoning would be worthy only of a slave, and disgraceful to a freeman. I answer, that the condition and essence of rational freedom is, not that the subject probably will not be abused, but that no man in the state shall be clothed with any discretionary power, under the colour and pretext of which he can dare to abuse him. As to probability, I answer, that in the mind of man there is no more instigating temptation to the most remorseless oppression, than the rancour and malice of irritated pride and wounded vanity.—To the argument of improbability I adduce in answer, the very fact, the very question in debate; nor to such answer can I see the possibility of any reply, save that the prosecutors are so heartily sick of the point of view into which they have put themselves by their prosecution, that they are not likely again to make a similar experiment. But when I see any man fearless of power, because it possibly, or probably, may not be exercised upon him, I am astonished at his fortitude; I am astonished at the tranquil courage of any man who can quietly see that a loaded cannon is brought to bear upon him, and that a fool is sitting at its touch-hole with a lighted match in his hand. And yet, my lords, upon a little reflection, what is it, after what we have seen, that should surprise us, however it may shock us? What have the last ten years of the world been employed in, but in destroying the land-marks of rights, and duties, and obligations? in substituting sounds in the place of sense? in substituting a vile and canting methodism in the place of social duty and practical honour? in suffering virtue to evaporate into phrase, and morality into hypocrisy and affectation?—We talk of the vio-



lations of Hamburgh or of Baden; we talk of the despotical and remorseless barbarian who tramples on the common privileges of the human being; who, in defiance of the most known and sacred rights, issues the brutal mandate of usurped authority; who brings his victim by force within the limits of a jurisdiction to which he never owed obedience, and there butchers him for a constructive offence. Does it not seem as if it were a contest whether we should be more scurrilous in invective, or more atrocious in imitation? Into what a condition must we be sinking, when we have the front to select, as the subjects of our obloquy, those very crimes which we have flung behind us in the race of profligate rivalry!

My lords, the learned counsel for the prosecutors have asserted, that this act of the forty-fourth of the king extends to all offences, no matter how long or previously to it they may have been committed. The words are, "That from and after the first day of August, 1804, if any person, &c. shall escape, &c."—Now, certainly nothing could be more convenient for the purpose of the prosecutors than to dismiss, as they have done, the words "escape and go into," altogether. If those words could have been saved from the ostracism of the prosecutors, they must have designated some act of the offenders, upon the happening or doing of which the operation of the statute might commence; but the temporary bar of these words they wave by the equity of their own construction, and thereby make it a retrospective law; and having so construed it a manifestly *ex post facto* law, they tell you it is no such thing, because it creates no new offence, and only makes the offender amenable who was not so before. The law professes to take effect only from and after the first of August, 1804:—Now, for eighteen months before that day, it is clear that Mr. Johnson could not be removed by any power existing from his country and his dwelling; but the moment the act took effect, it is made to operate upon an alleged offence, committed, if at all, confessedly eighteen months before. But another word as to the assertion, that it is not *ex post facto*, because it creates no new crime, but only makes the party amenable. The force of that argument is precisely this:—If this act inflicted deportation on the defendant by way of punishment after his guilt had been established by conviction, that would, no doubt, be tyrannical, because *ex post facto*; but here he suffers the deportation, while the law is bound to suppose him perfectly innocent; and that only by way of process to make him amenable, not by way of punishment: and surely he cannot be so unreasonable as not to feel the force of the distinction. How naturally, too, we find similar outrages resort to similar justifications! Such exactly was the defence of the forcible entry into Baden. Had that been a brutal violence committed in perpetration of the murder of the unfortunate

victim, perhaps very scrupulous moralists might find something in it to disapprove; but his imperial majesty was too delicately tender of the rights of individuals and of nations, to do any act so flagrant as that would be, if done in that point of view; but his imperial majesty only introduced a clause of *ne omittas* into his warrant, whereby the worshipful Bells and Medlicotts that executed it, were authorised to disregard any supposed fantastical privilege of nations that gave sanctuary to traitors; and he did that from the purest motives; from as disinterested a love of justice as that of the present prosecutors, and not at all in the way of an *ex post facto* law, but merely as process to bring him in, and make him amenable to the competent and unquestionable jurisdiction of the *bois de Boulogne*.—Such are the wretched sophistries to which men are obliged to have recourse, when their passions have led them to do what no thinking man can regard without horror, what they themselves cannot look at without shame, and for which no legitimate reasoning can suggest either justification or excuse. Such are the principles of criminal justice, on which the first experiment is made in Ireland; but I venture to pledge myself to my fellow-subjects of Great Britain, that, if the experiment succeeds, they shall soon have the full benefit of that success. I venture to promise them, they shall soon have their full measure of this salutary system for making men "amenable," heaped and running over into their bosoms.

There now remains, my lords, one, and only one topic of this odious subject, to call for observation. The offence here appears by the return and the affidavits to be a libel upon the Irish government, published by construction in Westminster. Of the constructive commission of a crime in one place by an agent, who, perhaps, at the moment of the act, is in another hemisphere, you have already heard enough:—Here, therefore, we will consider it simply as an alleged libel upon the Irish government; and whether, as such, it is a charge coming within the meaning of the statute, and for which a common justice of peace in one kingdom is empowered to grant a warrant for conveying the person accused for trial into the other. Your lordships will observe, that in the whole catalogue of crimes for which a justice of peace may grant a warrant, there is not one that imposes upon him the necessity of deciding upon any matter of law, involving the smallest doubt or difficulty whatsoever. In treason, the overt-act; in felony, whether capital or not, the act; in misdemeanors, the simple act. The dullest justice can understand what is a breach of the peace, and can describe it in his warrant. It is no more than the description of a fact which the informer has seen and sworn to. But no libel comes within such a class, for it is decided over and over, that a libel is no breach of the peace; and upon that ground it



was, that Mr. Wilkes, in 1763, was allowed the privilege of parliament, which privilege does not extend to any breach of the peace.

See then, my lords, what a task is imposed upon a justice of the peace, if he is to grant such a warrant upon such a charge: he no doubt may easily comprehend the allegation of the informer as to the fact of writing the supposed libel; in deciding whether the facts sworn amounted to a publication or not, I should have great apprehension of his fallibility; but if he got over those difficulties I should much fear for his competency to decide what given facts would amount to a constructive publication. But even if he did solve that question,—a point on which if I were a justice, I should acknowledge myself most profoundly ignorant,—he would then have to proceed to a labour in which I believe no man could expect him to succeed: that is, how far the paper sworn to was, in point of legal construction, libellous or not. I trust, this Court will never be prevailed upon to sanction, by its decision, a construction that would give to such a set of men a power so incompatible with every privilege of liberty, or of law. To say it would give an irresistible power of destroying the liberty of the press in Ireland would, I am aware, be but a silly argument, where such a thing has long ceased to exist; but I have for that very reason a double interest now, as a subject of the empire, in that noble guardian of liberty in the sister nation. When my own lamp is broken, I have a double interest in the preservation of my neighbour's. But if every man in England, who dares to observe, no matter how honestly and justly, upon the conduct of Irish ministers, is liable to be torn from his family and dragged hither by an Irish bailiff, for a constructive libel against the Irish government, and upon the authority of an Irish warrant, no man can be such a fool as not to see the consequence. The inevitable consequence is this: that at this awful crisis, when the weal, not of this empire only, but of the whole civilized world, depends on the steady faith and consolidated efforts of these two countries—when Ireland is become the right arm of England—when every thing that draws the common interest and affection closer gives the hope of life—when every thing that has even a tendency to relax that sentiment is a symptom of death,—even at such a crisis may the rashness or folly of those entrusted with its management so act as to destroy its internal prosperity and repose, and lead it into the two-fold fatal error, of mistaking its natural enemies for its friends, and its natural friends for its natural enemies; without any man being found so romantically daring as to give notice of the approaching destruction.

My lords, I suppose the learned counsel will do here what they have done in the other court: they will assert, that this libel is not triable here; and they will argue, that so false and heinous a production surely ought to

be triable somewhere. As to the first position, I say the law is directly against them. From a very early stage of the discussion, the gentlemen for the prosecution thought it wise for their clients to take a range into the facts much more at large than they appeared on the return to the writ, or even by the affidavits that have been made; and they have done this to take the opportunity of aggravating the guilt of the defendant, and at the same time of panegyrising their clients; they have therefore not argued upon the libel generally as a libel, but they have thought it prudent to appear perfectly acquainted with the charges which it contains:—they have therefore assumed, that it relates to the transactions of the twenty-third of July, 1803, and that the guilt of the defendant was, that he wrote that letter in Ireland, which was afterwards published in England; not by himself, but by some other persons. Now, on these facts, nothing can be clearer than that he is triable here. If it be a libel, and if he wrote it here, and it was published in England, most manifestly there must have been a precedent publication, not merely by construction of law, in Ireland, but a publication by actual fact; and for this plain reason, if you for a moment suppose the libel in his possession (and if he did in fact write it, I can scarcely conceive that it was not, unless he wrote it perhaps by construction), there were no physical means of transmitting it to England that would not amount to a publication here; because, if he put it into the post-office, or gave it to a messenger to carry thither, that would be complete evidence of publication against him: so would the mere possession of the paper, in the hands of the witness who appeared and produced it, be perfect evidence, if not accounted for or contradicted, to charge him with the publication; so that really I am surprised how gentlemen could be betrayed into positions so utterly without foundation. They would have acted just as usefully for their clients, if they had admitted, what every man knows to be the fact, that is, that they durst not bring the charge before an Irish jury. The facts of that period were too well understood. The Irish public might have looked at such a prosecution with the most incredulous detestation; and if they had been so indiscreet as to run the risk of coming before an Irish jury, instead of refuting the charges against them as a calumny, they would have exposed themselves to the peril of establishing the accusation, and of raising the character of the man whom they had the heart to destroy, because he had dared to censure them. Let not the learned gentlemen, I pray, suppose me so ungracious as to say, that this publication, which has given so much pain to their clients, is actually true; I cannot personally know it to be so, nor do I say so, nor is this the place or the occasion to say that it is so. I mean only to speak positively to the question before you, which is



matter of law. But as the gentlemen themselves thought it meet to pronounce an eulogy on their clients, I thought it rather unseemly not to show that I attended to them: I have most respectfully done so; I do not contradict any praise of their virtues or their wisdom, and I only wish to add my very humble commendation of their prudence and discretion, in not bringing the trial of the present libel before a jury of this country.

The learned counsel have not been contented with abusing this libel as a production perfectly known to them; but they have wandered into the regions of fancy. No doubt the other judges, to whom those pathetic flights of forensic sensibility were addressed, must have been strongly affected by them. The learned gentlemen have supposed a variety of possible cases. They have supposed cases of the foulest calumniators aspersing the most virtuous ministers. Whether such supposed cases have been suggested by fancy, or by fact, it is not for me to decide; but I beg leave to say, that it is as allowable to us as to them to put cases of supposition—

—Cur ego si fingere pauca  
Possum, invidear?

Let me then, my lords, put an imaginary case of a different kind:—Let me suppose that a great personage, entrusted with the safety of the citadel (meaning and wishing perhaps well, but misled by those lacquered vermin that swarm in every great hall), leaves it so loosely guarded, that nothing but the gracious interposition of Providence has saved it from the enemy. Let me suppose another great personage going out of his natural department, and under the supposed authority of high station, disseminating such doctrines as tend to root up the foundation of society—to destroy all confidence between man and man—and to impress the great body of the people with a delusive and desperate opinion, that their religion could dissolve or condemn the sacred obligations that binds them to their country—that their rulers have no reliance upon their faith, and are resolved to shut the gates of mercy against them.

Suppose a good and virtuous man saw, that such doctrines must necessarily torture the nation into such madness and despair, as to render them unfit for any system of mild or moderate government; that, if on one side, bigotry or folly shall inject their veins with fire, such a fever must be kindled as can be allayed only by keeping a stream of blood perpetually running from the other, and that the horrors of martial law must become the direful but inevitable consequence. In such a case let me ask you what would be his indispensable duty?—it would be, to avert such dreadful dangers, by exposing the conduct of such persons; by holding up the folly of such bigoted and blind enthusiasm to condign derision and contempt; and painfully would he feel that on such an occasion he must dismiss

all forms and ceremonies; and that to do his duty with effect, he must do it without mercy. He should also foresee, that a person so acting when he returned to those to whom he was responsible, would endeavour to justify himself by defaming the country which he had abused—for calumny is the natural defence of the oppressor: he should, therefore, so reduce his personal credit to its just standard, that his assertions might find no more belief than they deserved. Were such a person to be looked on as a mere private individual, charity and good-nature might suggest not a little in his excuse. An inexperienced man, new to the world, and in the honeymoon of preferment, would run no small risk of having his head turned in Ireland. The people in our island are by nature penetrating, sagacious, artful and comic—‘*natio comœda est.*’ In no country under heaven would an ass be more likely to be hood-winked, by having his ears drawn over his eyes, and acquire that phantastical alacrity that makes dullness disposable to the purposes of humorous malice, or interested imposture. In Ireland, a new great man could get the freedom of a science as easily as of a corporation, and become a doctor, by construction, of the whole Encyclopædia; and great allowance might be made under such circumstances for indiscretions and mistakes, as long as they related only to himself; but the moment they become public mischiefs, they lose all pretensions to excuse—the very ambition of incapacity is a crime not to be forgiven; and however painful it may be to inflict punishment, it must be remembered, that mercy to the delinquent would be treason to the public.

I can the more easily understand the painfulness of the conflict between charity and duty, because at this moment I am labouring under it myself; and I feel it the more acutely, because I am confident, that the paroxysms of passion that have produced these public discussions have been bitterly repented of. I think, also, that I should not act fairly if I did not acquit my learned opponents of all share whatsoever in this prosecution—they have too much good sense to have advised it; on the contrary, I can easily suppose Mr. Attorney-General sent for to give counsel and comfort to his patient; and after hearing no very concise detail of his griefs, his resentments and his misgivings, methinks I hear the answer that he gives, after a pause of sympathy and reflexion;—“No, sir, do not proceed in such a business; you will only expose yourself to scorn in one country, and to detestation in the other. You know you durst not try him here, where the whole kingdom would be his witness. If you should attempt to try him there, where he can have no witness, you will have both countries upon your back. An English jury would never find him guilty. You will only confirm the charge against yourself; and be the victim of an impotent, abortive malice. If you should



have any ulterior project against him, you will defeat that also; for they who might otherwise concur in the design, will be shocked and ashamed of the violence and folly of such a tyrannical proceeding, and will make a merit of protecting him, and of leaving you in the lurch. What you say of your own feelings, I can easily conceive.—You think you have been much exposed by those letters; but then remember, my dear sir, that a man can claim the privilege of being made ridiculous or hateful by no publications but his own. Vindictive critics have their rights, as well as bad authors. The thing is bad enough at best; but, if you go on, you will make it worse—it will be considered an attempt to degrade the Irish bench and the Irish bar—you are not aware what a nest of hornets you are disturbing.—One inevitable consequence you do not foresee—you will certainly create the very thing in Ireland that you are so afraid of, a newspaper;—think of that, and keep yourself quiet. And in the mean time, console yourself with reflecting, that no man is laughed at for a long time;—every day will procure some new ridicule that must supersede him.”—Such, I am satisfied, was the counsel given;—but I have no apprehension for my client, because it was not taken. Even if it should be his fate to be surrendered to his keepers—to be torn from his family—to have his obsequies performed by torch light—to be carried to a foreign land, and to a strange tribunal, where no witness can attest his innocence, where no voice that he ever heard can be raised in his defence, where he must stand mute, not of his own malice, but the malice of his enemies—yes, even so, I see nothing for him to fear—that all gracious Being, that shields the feeble from the oppressor, will fill his heart with hope, and confidence, and courage; his sufferings will be his armour, and his weakness will be his strength: he will find himself in the hands of a brave, a just, and a generous nation—he will find that the bright examples of her Russells and her Sidneys have not been lost to her children; they will behold him with sympathy and respect, and his persecutors with shame and abhorrence; they will feel, too, that what is then his situation, may to-morrow be their own—but their first tear will be shed for him, and the second only for themselves—their hearts will melt in his acquittal; they will convey him kindly and fondly to their shore; and he will return in triumph to his country; to the threshold of his sacred home, and to the weeping welcome of his delighted family; he will find that the darkness of a dreary and a lingering night hath at length passed away, and that joy cometh in the morning.—No, my lords, I have no fear for the ultimate safety of my client. Even in these very acts of brutal violence that have been committed against him, do I hail the flattering hope of final advantage to him, and not only of final advantage to him but of better days

and more prosperous fortune for this afflicted country—that country of which I have so often abandoned all hope, and which I have been so often determined to quit for ever.

*Sape vale dicto multa sum deinde locutus,  
Et quasi discedens oscula summa dabam,  
Indulgens animo, pes tardus erat.*

But I am reclaimed from that infidel despair—I am satisfied that while a man is suffered to live, it is an intimation from Providence that he has some duty to discharge, which it is mean and criminal to decline: had I been guilty of that ignominious flight, and gone to pine in the obscurity of some distant retreat, even in that grave I should have been haunted by those passions by which my life had been agitated—

—————*Vivis quæ cura*—————  
—————*Eadem sequitur tellure repostos.*

And if the transactions of this day had reached me, I feel, how my heart would have been agonized by the shame of the desertion, nor would my sufferings have been mitigated by a sense of the feebleness of that aid, or the smallness of that service which I could render or withdraw. They would have been aggravated by the consciousness that, however feeble or worthless they were, I should not have dared to thieve them from my country.—I have repented—I have staid—and I am at once rebuked and rewarded by the happier hopes that I now entertain.—In the anxious sympathy of the public—in the anxious sympathy of my learned brethren, do I catch the happy presage of a brighter fate for Ireland. They see, that within these sacred walls, the cause of liberty and of man may be pleaded with boldness and heard with favour. I am satisfied they will never forget the great trust, of which they alone are now the remaining depositaries. While they continue to cultivate a sound and literate philosophy—a mild and tolerating christianity—and to make both the sources of a just, and liberal, and constitutional jurisprudence, I see every thing for us to hope. Into their hands therefore, with the most affectionate confidence in their virtue, do I commit these precious hopes. Even I may live long enough yet to see the approaching completion, if not the perfect accomplishment of them. Pleased shall I then resign the scene to fitter actors—pleased shall I lay down my wearied head to rest, and say “Lord, now lettest thou thy servant depart in peace, according to thy word, for mine eyes have seen thy salvation.”

Mr. William Johnson.\*—My Lords; As the counsel for the crown will be entitled to the reply, I should be precluded from any opportunity of addressing the Court upon this sub-

\* “This report contains the substance of “Mr. Johnson’s arguments both in the King’s-bench and Exchequer.” *Orig. Ed.*



ject, if I did not offer myself at this moment to its consideration. I feel that I have more than a common claim to be heard on this occasion. Certainly no man ever acted under the impulse of a more imperious duty, or had a more afflicting task to perform. In what I shall say, however, to the Court, I shall confine myself to a discussion of the legal questions now before it; and will endeavour not to entertain a thought, or utter an expression, connected with my own personal feelings.

Your lordships will determine the question now before you upon the construction of this act, not from any opinion of what it ought to extend to, but from what, according to the established rules of interpretation, it does extend to. Even if it should be your opinion, that it would have been matter of prudent regulation, that the provisions of this act should embrace the present case; you will yet, if I show you that it is, at all events, a *casus omisus*, leave it as the act has done. You will be the more inclined to do so, if in the course of my observations I should show you, that to extend this act to the case now before you, would be to subvert the most acknowledged principles of justice, and the admitted common law rights of the meanest individual in society. You will not legislate; and particularly you will not do so to have your share in the common destruction of law and liberty. In the interpretation of a statute, levelling by the construction contended for the ancient bulwarks of our constitution, you will go for such a purpose as little way as possible. If I show you, that from the whole view of this act, the committing a crime by *actual* presence; and *escaping or removing after such commission* were alone in the contemplation of the legislature; and that the *title, recitals, and provisions* of this act regard these alone, you will not extend it to cases of the constructive commission of offences, neither within the title of this act, the recited mischief, nor the remedy provided by it.

The application now before the Court on the part of the defendant, is to be discharged from an illegal arrest. It depends upon a recent act of parliament, upon the construction of which you have no judicial decisions. The return to the Habeas Corpus which has been sued out by the defendant, states a warrant of the chief justice of England, grounded on an indictment found at Middlesex against the defendant, for the publication of a libel. This warrant has been endorsed by an Irish justice of the peace, under a *presumed* authority, given by the 44th of the present king, chap. 92. Under this endorsement the defendant has been arrested; and it now appears, by uncontroverted documents before the Court, that the gentleman applying for his discharge has been a continuing resident of this part of the United Kingdom, from a period before which it is absolutely impossible that the offence, with which he stands charged, could have been committed; and within which, he could

not *himself* have done any act in England, criminal or otherwise; or within such period have removed therefrom. The question, therefore, will be, whether under all these circumstances, appearing as well upon the part of the return itself, as on the *uncontradicted* affidavits made on the part of the defendant, this warrant of lord Ellenborough, so endorsed, is a sufficient authority under which to arrest and hold the present defendant.

Your lordships must observe, that the only power you can exercise in this case is to discharge. You must either not intermeddle at all, or intermeddle to this extent. If the arrest be legal, though only on process, and for a misdemeanor, *your authority* is at an end. There have been times when such a proposition would have startled the constitutional feelings of a judge of the land: whether it be right, that such times should have passed away, is not for me to argue. Such is the present law; but whether it extends to the case before you—that is, to the case of an offence bailable of common right, is *one* of the questions on which I mean to trouble you.

Some crude and indigested opinions have been thrown out in the course of this discussion as if this Court could take bail in a case circumstanced like the present: it may, therefore, be necessary to examine this matter a little upon principle:—The present act embraces the three countries, England, Ireland, and Scotland. The legal jurisdictions of these countries are perfectly distinct; and in legal contemplation so are their laws. The principle of distinctness is as strong between the laws of England and Ireland, as between the laws of Scotland and either of the other countries; though the distinctness in point of fact may not be so great. Let us then, for the sake of argument, suppose that the warrant in this case had been issued in Scotland, for in sound reasoning it will make no difference, though it may strike common apprehension more: is there any tribunal in this country which can determine whether the warrant be or be not conformable to the law of that country? For instance, what tribunal in this country has *judicial* knowledge of the crimes of *hamesucken* and *sorning*? yet these are capital offences by the law of Scotland. A tribunal which has not knowledge of the law can have none of the *offence*, and therefore cannot act upon it. In Wilkes's case, my lord Camden lays it down, that it is sufficient if the offence appear in the warrant on which a party is arrested; because *that* is the guide to the magistrate in taking or refusing bail. This is sufficient upon principle; and I will not trouble the court upon the practical absurdity which would follow, from any attempt to take bail in this country for offences committed in England or Scotland. They will shortly appear from a few simple questions:—To whom is the recognizance to be returned? Of what court can it be made a record? By what process is the return of it to be enforced? If forfeited,



where is it to be estreated? and if estreated, how to be levied?

Enough has been said, and much more might be said, to show, that as the law now stands, this court, much less any inferior tribunal, cannot take bail for offences alleged to be committed in England or Scotland. I use this argument merely as an argument of construction; and to show, that if you can avoid it, you will not give this act a construction which would militate with the common law right of the subject—that is, of being bailed for a bailable offence *within the jurisdiction* where the arrest is made. If this act should be so construed, I will venture to say, it will stand a single and awful exception in the history of English legislation. It must, therefore, be your anxious desire, if the established rules of construction will allow you, to confine the operation of this act to offences not bailable; no mischief will then arise: for to such offenders it can make no difference, whether the jurisdiction within which they are arrested have or have not an authority to bail. Let us examine this matter a little more minutely:—

If this act of parliament extend to one misdemeanor it extends to all. I throw out of the present discussion all consideration of the particular quality of the misdemeanor charged upon the present defendant. Your lordships have nothing to do with any supposed intent which the persons who brought in this bill, at this *particular time*, might have had. You will not trouble yourselves with the consideration, whether any hope was entertained, either by an adoption of the letter of certain expressions, or by any ingenious interpretation of doubtful and ambiguous passages, of bringing within this act any particular case, excluded by its general spirit and policy and the settled principles of law: with such considerations you will have nothing to do. You sit here to ascertain the meaning of the legislature, and to arrive at it through the known maxims of law, and the established rules of construction.

I shall endeavour to show, in the first place, that you ought not to extend this act to bailable offences; because you would thereby repeal the Habeas Corpus act, and take away by construction the common law right of every subject in the realm: and secondly, that though you should feel yourselves bound to do so, you will yet be of opinion, that this act can relate only to offences committed by *actual presence* in that part of Great Britain or Ireland in which the offence is charged to have been done, and consequent escape or removal; and that it would be pregnant with the utmost absurdity, and effect the most unheard of solecism in legislation, to extend it to cases where the person charged resided out of that part of the United Kingdom in which he is charged at the time of the commission of the alleged offence—in other words, that avoidance of justice, by removal from the

place where the act is done which is charged to be an offence, is an indispensable requisite to give operation to this law.

Before I particularly examine the first head of this argument, permit me to take notice of an observation made by your lordship in another place:—Your lordship said, and truly, that before the passing of the act now before you, persons charged with capital offences might be arrested and transmitted from one kingdom to the other for trial in the place where their crime was alleged to have been perpetrated; and that a special saving and provision in the English Habeas Corpus act recognizes this proceeding, and provides, that it may thereafter take place, as it had done before. Your lordship then said, that it is recited by the present act, that there existed no *sufficient* provision in the law of either countries for the arrest and transmission of offenders; and your objection is, that this recital cannot be accounted for, unless this act be extended beyond capital cases, for that the law had already provided for such cases. In my humble judgment, this objection may receive a complete answer. The words referred to in the present act are, “That there was no *sufficient* provision for the transmission of *such offenders*.” This expression admits there was some existing provision of the kind alluded to. Let us see what it was:—

By the statute of Westminster the first, commitments *per speciale mandatum domini regis* were declared irreplevisable. By the equity of the statute this was in time extended to commitments by order of the privy council, where it was supposed the king presided. At length, in point of practice, this authority came to be exercised by the secretary of state; not by any authority of his as secretary of state, but as being constructively a commitment *per speciale mandatum domini regis*. You will see this history of the authority of the secretary of state to commit, stated by my lord Camden, in his famous argument given in the judgment he pronounced in the case, *Entick, v. Carrington* and others, reported in the 11th volume of the state trials, Mr. Hargrave's edition.\* Under the exercise of this authority it was, that persons in England, charged with capital felonies done abroad, were arrested and transmitted to the scene of their guilt to receive trial. Applied to the cases of such offenders, the foundations of such an authority were not likely to be very critically examined. Independent of the recognition of it by the provision alluded to in the act of Habeas Corpus, there is little in such a proceeding to satisfy the feelings of a constitutional lawyer: not that any man could object to the end for which, in the instances under consideration, it was exercised. The heart and mind of every man accedes spontaneously to the act, by which the traitor, murderer, or felon, is brought *back* to the scene of

\* 19 Howell's State Trials, 1044.



his guilt, to receive the punishment due to his crime; and the exercise of a vigour beyond the law would be long submitted to when applied to such offenders. The provision in the English Habeas Corpus act has, however, given a sanction to what might have well been questioned before; and I admit, that since that time, the authority so exercised could not be questioned.

It was, however, extremely defective.—There was but one tribunal that could act, and that fixed to a particular place, and not open to the subject *ex debito justitiæ*. From the nature of it, it must have been difficult to put in motion, and almost ineffectual to prevent farther escape upon the moment of discovery. Flowing merely from the prerogative, and to be exercised only at discretion, the protection of the crown would, in all such cases be insufficient for the aggrieved subject. The reservoirs of justice should, if I may use the expression, be always open, and scattered through the land. This was to be found only in one corner of the kingdom, and was under the key of whatever individual was the minister of the day. He could not be compelled to act by any of the ordinary existing authorities in the realm; and when he did, it was a kind of phenomenon in a regulated government like ours, to see the secretary of state doing the duty of a justice of the peace, and a king's messenger substituted in the place of the constable. Upon the whole, it was a jurisdiction neither fixed in its principles, certain in its operation, nor open at all times to the subjects of the realm; and it was of a kind utterly anomalous in the constitution.

The difficulties arising from this undefined and irregular authority in the arrest and transmission of traitors and felons from one kingdom to another, had been long felt and often complained of, and well deserved to be removed by statutable provision—such provision had been for centuries as necessary as now, but evils have frequently a long reign before legislative remedies are applied. The state of things, therefore, as I have here detailed them, fully accounts for the recital, that “there was no *sufficient* provision for the arrest and transmission of offenders,” even supposing the act confined to cases not bailable of right.

Let us now see, if the terms made use of in this act give any additional force to the opinion, that it ought to be confined to the *majora crimina*. The mischief recited in the section now under consideration is, “The escape of *felons and other malefactors* from one kingdom to another, whereby their offences frequently remain unpunished.”—It may not be immaterial just to remark here, that if it had been intended to include persons guilty of mere misdemeanors in this description, the recital, *as to them*, ought to have been, “that by escape from one kingdom to another their offences *always* remained unpunished,” unless a voluntary desertion of their country were

considered (as perhaps in a municipal view it ought to be), as a sufficient punishment for any offence of that nature of which they could be guilty. In truth, the phrase *felons and malefactors*, used by the legislature, gives considerable colour to the inference I am endeavouring to draw. I admit, from the words *felons and other malefactors*, you must understand *felons*, and *malefactors other than felons*. Still I think it reasonable to suppose, that the legislature intended felonies and *other crimes* of the same stamp; or, in other words, the *majora crimina*; such as are not bailable by the ordinary authorities. Many such crimes, not felonies, may be found by a slight examination of the criminal code of England.

But there existed a still farther necessity for the use of some term beside *felons*. The act relates not only to England, but to Scotland. The word *felons* would not answer for this purpose; it is not descriptive, as I believe, of any class of offenders in the Scottish law. The word *malefactors*, therefore, being free from the rigid interpretation which a term merely technical must always receive, and being, in ordinary speech, descriptive of the higher classes of offenders, was used to take in such of this description in England as the word *felons* would not extend to, and to include all offenders in Scotland of a like kind. If the word *malefactors* had been used for the purpose of including offenders of every description, the introduction of the word *felons* was not only useless, but productive of confusion and uncertainty in a description, which, without it, would be perfectly clear.

But this will appear more manifest from a short review of the different acts heretofore passed in England on this subject, comparing them, as far as is necessary for this part of the question, with the act now before you. The acts I allude to are the 23rd of George 2nd, c. 26, s. 11; the 24th of George 2nd, c. 55, s. 1; and the 13th of George 3rd, c. 31. The two first acts relate to the arrest and transmission of offenders from county to county within England, and the last to the arrest and transmission of *felons and other malefactors* from England to Scotland, and *vice versâ*. The present act is, in truth, compounded, *mutatis mutandis*, of these several acts. It is contended on the other side, that the mischief recited by those acts, and the remedy provided for that mischief, between kingdom and kingdom, and county and county, are exactly commensurate; that is, that they equally extend to *all* offenders:—now, it is remarkable, that in the 23rd of Geo. 2nd, and the 24th of Geo. 2nd, and the first part of the present act, all of which relate to arrest and transmission between county and county, within the same kingdom, *one uniform preamble* is adopted of the description of persons within the purview of these acts, viz. *all persons against whom a warrant shall be issued*; but, in the acts which relate to arrest and



transmission from kingdom to kingdom, the legislature, *expressly rejecting* the preamble which was before them in the acts relating to county and county, adopt a new and different preamble in the act of 1773, *i. e.* stat. 13th Geo. 3rd, and, instead of the words, "all persons against whom a warrant shall be issued," the description is "felons and other malefactors, making their escape, &c."—This distinction in the description of the persons intended to be affected by those acts respectively is studiously preserved in the act now before you, and remarkably preserved, because this one act includes and embodies the provisions of all the rest; and if the construction now insisted on by the counsel for the Crown be the true one, the description "all persons against whom a warrant shall have been issued," would have been the true description to have adopted in the preamble, not only to the regulations relating to county and county within the same kingdom, but to the regulations for the arrest and transmission of offenders between kingdom and kingdom. Does this variance of language in the same instrument induce no variance of construction? and can we suppose the legislature used it for the mere purpose of perplexing what would be plain and explicit without it?

It follows from what I have said, that if you extend the operation of this act to offences not bailable, or, in other words, to misdemeanors of every description, you, in effect, repeal the Habeas Corpus acts of both countries. It would have been a strong measure in the legislature to have repealed those acts even by express words, but I will venture to say, it would be a still bolder measure in any court of justice to do so, by the construction of a law, which, by the ordinary rules of construction, *may be construed otherwise*.

I have stated it to be the common law right of every subject of this realm to be bailed for a bailable offence (if he tender sufficient bail), *on the spot* where he is arrested. The act before you studiously provides for this, in case of arrest in one county for an offence committed in another; the party must be bailed on the spot where he is arrested. Yet it is contended, that if the warrant has issued in Great Britain for the *pettiest offence* known to the law, the individual arrested may be carried from the remotest corner of this part of the united kingdom to England or Scotland, as the case may be, to look for bail, not where his connexions live, not where he is known, but in a place where perhaps he has never set his foot, where his name has never been heard of, nor even his language understood. Can the mighty power of a state be called into action to work so foul a wrong as this, and in a case so disproportionate to its efforts, and so far beneath its care? If the construction now contended for be true with respect to this country, it must be equally true with respect to England and Scotland. There is a provision in the Habeas Corpus act of England, that no

inhabitant of England should be sent prisoner into Ireland, &c.; and every such imprisonment is adjudged illegal; an action of false imprisonment is given to the party aggrieved, and the penalties of a premunire denounced against the offender; and he is rendered incapable of a pardon from the crown—31st Charles 2nd, c. 2, s. 12. This security to the subject against the strong hand of power, by *whomsoever* exercised, is confined to cases either where no offence is alleged against the party so taken and imprisoned, or where he is charged with an offence *not capital*. It of course excludes the possibility, if it be not repealed by the present law, of arresting and transmitting an inhabitant of England to this country for any alleged misdemeanor; but the construction now contended for renders its provisions absolutely nugatory, and the proudest subject in England may be sent here, without the possibility of bail in England, upon the most groundless and wanton accusation that malice ever framed, and for the lowest and most trivial offence known in the criminal code.

I have said thus much to show, that you ought not to extend this law by construction to cases bailable of common right, because by doing so, you would impute to the legislature as foul a wrong as could be worked in a country having any pretensions to a free constitution. On this head of argument, however, I will not trouble the Court farther. It is my intention to argue this question with the most perfect candour, and I have no hesitation in declaring, that this is not the part of the case on which I mean confidently to rest the cause of my client.

I proceed, therefore, to the second head of the argument:

My position is, that this act is confined to persons who having by *actual* presence committed an offence in a particular jurisdiction, avoid, by *removal out of that jurisdiction* after the offence committed, the ready process of the law issuing *within it*, whereby, in the words of the act, "their offences often remain unpunished."—I shall be content to depart from this hall a proscribed driveller, if, upon this part of the case, I leave the smallest doubt upon any *unprejudiced* legal mind. The act of the 44th of the king, upon which the present question arises, is founded upon three previous acts, passed in England *in pari materia*, and, if I may so speak, embodies them all. The title corresponds with this origin, and bespeaks directly its parentage. It is "An act to render more easy the apprehending and bringing to trial offenders *escaping* from one part of the United Kingdom to the other, and *also* from county to county." Its regulations are internal and external. The provisions as to the first are taken in terms from the 23rd and 24th Geo. 2nd in England, which I have already mentioned, and as to the latter, from the 13th of the present king in England. The 11th section of the first of



those acts contains all that relates to the present question, and the preamble of that section states, that "persons against whom warrants are granted by justices of the peace for the several counties within this kingdom, *escape* into other counties *out* of the jurisdiction of the justices granting such warrants, and *thereby* avoid being punished for the offences wherewith they are charged;" and it enacts, "that in case any person against whom a legal warrant shall be issued by any justice or justices of the peace for any county, &c. shall escape, it shall be lawful for any justice, &c. for any county, &c. to which *such* person shall have gone or escaped, to endorse such warrant, &c. and to cause such person to be apprehended, and sent to the justice or justices granting such warrant, or to some other justice or justices of the county, &c. *from whence* such person shall have *gone or escaped*, to be dealt with according to law," &c.

The slightest perusal of this clause shows the description of persons who were the objects of this law—"persons against whom warrants are granted, *escaping*, &c." The issuing of a warrant is a *precedent fact*, and the words, "against whom warrants are granted," designate and mark out the individuals, who, *coming under this description*, may, *by escaping*, become the objects of the law. They must be persons against whom a warrant *has* issued, and the provision in the enacting part is, that "it shall and may be lawful for any justice of the peace of the county, &c. to which *such* person shall have gone or escaped," that is, a person against whom a warrant *has* issued. Thus then the preamble reciting the mischief, and the clause providing the remedy, attach solely upon individuals, who "being persons against whom warrants *have* issued," shall escape: that is, the mischief recited and remedy applied, are expressly confined to the *escape* of persons against whom warrants *have* issued; in other words, to escape, *after* warrant issued: and in truth, in a legal technical sense, such persons alone can be *guilty* of an escape. Now, assuming for a moment, what indeed is pretty clear, that the object of the law was the apprehension of persons committing a breach of the peace by *actual* presence, it is manifest that the provisions of this act were extremely defective. No person quitting the jurisdiction *after* the offence committed, and *BEFORE* warrant granted, could be affected by the provisions of it, so that if the conscience of the offender took the alarm *before* any process issued for his apprehension, this law as to him was a dead letter.

This imperfection was soon felt, for in the very next year, the 24th of Geo. 2nd, c. 55 was passed for the express purpose of doing it away. Its *only* title is, "An act for amending and making *more effectual* the former act." It recites the entire enacting clause of the former act, and then goes on in the following words, "And whereas *such offender or offenders* may reside and be in some other county, &c.

*out* of the jurisdiction of the justice or justices granting such warrant as aforesaid, *before* the granting such warrant, *and* without escaping or going out of the county &c. *after* such warrant granted." Now it is remarkable, that the word offender does not occur in any part of the enacting clause of the 11th section of the 23rd Geo. 2nd, recited in the 24th. To whom then does the word such offender used in the preamble of this act, relate? It must relate to some description of person mentioned in the 23rd Geo. 2nd, as it follows immediately the recital of that act—it manifestly refers to the description of persons about whom alone that act was conversant, that is, persons escaping out of their jurisdiction.—Now, why does the act call such persons offenders? Because escape was, of itself, and, without any other guilt whatsoever, an high offence at the common law, and attended with a forfeiture of goods and chattels, even though the person escaping was afterwards acquitted of the charge for which he fled; and the formal direction to juries at this day upon criminal trials, to inquire if the culprit fled for the same or not, shows what the law is upon this subject.

In legal contemplation it is in this sense alone that the persons described in the 23rd Geo. 2nd, can be called offenders. Let us therefore substitute the terms of the definition in the room of the term defined, and the recital of the 24th Geo. 2nd will run thus, "And whereas persons *escaping* may reside and be in some other county, &c. before the granting of such warrant, and without escaping out of the county, &c. *after* the granting of such warrant." If the act had not meant to confine itself to offenders escaping, its language would have been very different; it would have recited the mischief thus, "Whereas persons committing offences, or procuring offences to be committed in one county, may reside and be in another county, &c." Now, the words "and without escaping *after* warrant granted," are the same as "not having escaped after warrant granted," and are as complete a negative pregnant as can occur in any form of speech whatsoever, and directly imply escape *before* warrant granted. I therefore consider this as a full and legislative declaration of the description of persons to whom those acts are to apply, and on what kind of persons residing or being in another county, out of the jurisdiction of the justice granting the warrant, it meant to attach its provisions. The first act expressly relates to persons escaping *only*. The second directly refers to that description under the words "such offenders." The first is confined to escape *after* warrant granted; the second extends to escape *before* or *after*; and both are confined to offenders *escaping*.

But this will be still more manifest if you consider what is the ultimate evil stated by the 23rd Geo. 2nd, against which it was necessary to provide a legislative remedy; it is



that thereby, that is, by *escaping*, such persons avoid being punished: *impunity* of offence by escape or removal *out* of one jurisdiction *into* another is the public grievance; no new or other mischief is recited by the statute of the 24th Geo. 2nd. Is it then unfair to conclude, or rather must we not necessarily do so, that the mischief intended to be guarded against by both these acts, and fully and clearly expressed in the first, is the same; but that the remedy provided by the first was not co-extensive as it ought to be with the evil? The second act therefore was passed, and was intended to embrace all persons who manifested their guilt by flight; the first having preposterously confined its operation to this manifestation taking place *after* warrant, though in truth the consciousness of crime, which is always coeval with the act, was likely in most instances to produce this manifestation long before. It follows, from the view I have taken of these acts, that *actual violators* of the public peace *escaping* or *removing* out of the jurisdiction where they had committed the offence, and *thereby* avoiding the punishment due to their offence, are the objects of this law—none others are within the mischief—none others ought to be within the remedy.

Any difficulty or embarrassment in the construction of those acts arises from the legal fiction, that in misdemeanors all are principals. In any higher species of crimes, in which the distinction between principal and accessory is preserved, it could never have occurred to any man, that the accessorial offender remaining quietly where he had been guilty of the accessorial offence, and in which place alone by the law of England he must be tried, if tried at all, could, under the operation of this law, be taken under a warrant issued where the principal offence was committed, and endorsed, according to the provisions of the law now under examination.

Now let us apply these acts, both with respect to the mischief recited in them and the remedy provided by them, to persons charged with misdemeanors procured by them to be committed in another jurisdiction than that in which they live, and who have never removed from the place in which the act of procurement was committed. For the sake of a short expression and one sufficiently clear I will describe such persons as persons charged with a constructive misdemeanor. The expression though not strictly accurate is sufficiently so for the present purpose, it being understood that I mean thereby persons who, by advice or *other* procurement, effect the commission of a misdemeanor in another county than that in which they reside, and are therefore in law, if *resident within the realm of England at the time of such procurement*, principals in the misdemeanor so advised or procured to be committed within another county of the same realm—my reason for thus confining the accessorial and principal offence to the same part of the United Kingdom will be seen

hereafter. The fundamental mischief to be provided against by those acts is the avoiding punishment by offenders, and that in truth by the only way in which punishment can be avoided, by some agency on the part of the offender.—Now by what process of reasoning can this apply to a man who never stirs from the usual place of his abode, who lives in the scene of every act of his life, and can be reached without difficulty or delay by any legal process issuing within the jurisdiction in which he lives?—has such a man done any act whereby he can *avoid* punishment?—is he not ex hypothesi so far from avoiding legal process, and thereby avoiding punishment, amenable to the authority of every justice within the county in which he lives?—The offence, in which in legal contemplation he is considered as a principal, being committed elsewhere makes no difference—any justice of the peace may commit an offender within his jurisdiction though for an offence committed out of it. This is fully laid down in Comyns, title Justices of the Peace; and indeed in every book of authority treating of the duty of justices of the peace.—What reason then, for any purpose of public justice, can there be for giving the celerity of a courier to legal process against a man who has never removed from the jurisdiction to whose authority he was subject every hour of his life, who has furnished no conclusion of guilt by flight, and who, so far from avoiding punishment by any act of his, remains within the level of that authority which is always pointed at offenders within its jurisdiction?

In cases of escape the remedy must be quick or it would be abortive. The simple act of endorsement by a justice is therefore made sufficient to give efficacy to a warrant brought against an escaping offender. What reason can there be for adopting this remedy against a man who remains at his post?—show me the possibility of such a man not being amenable to the law, or by any act of his avoiding punishment, and I will give up the question.

Let us now proceed to the 13th of the King, c. 31.—The mischief recited in its preamble is the *escape* of *felons* and other malefactors, whereby their offences remain unpunished. I will not now argue upon the import of these words as descriptive of a certain class of offenders only. I do however no violence to language in referring the whole description to the perpetrators of crimes by *actual* presence escaping or removing, in opposition to persons charged with constructive misdemeanors who have never escaped or removed at all. The enacting part of this statute of the 13th of the King is the same *mutatis mutandis* with the enacting part of the 24th of Geo. 2nd, except in one particular, which not relating to the present part of the argument I shall not now notice, but to which I mean hereafter to solicit the attention of the Court. The clauses however being thus similar, it is manifest that



every observation I have made upon the 24th of Geo. 2nd, apply at least with equal strength to the 13th of the King. This law has been in force above thirty years between England and Scotland, and not a single instance is produced of its ever having been applied to any other than cases of escape.

I have now, my lord, come in order to the act upon which the present questions arise. It affects to embody the several acts to which I have already called the attention of the Court, and to give to this country the benefit of similar provisions. The framers of it had before them all the preceding acts, and at one view could see the objects, mischief, and remedy. With these before their eyes they framed the title of the present act. What is it? it is entitled, "An act to render more easy the apprehending and bringing to trial offenders *escaping* from one part of the united kingdom to the other and from one county to the other." Before I proceed, allow me, my lords, to recall to the recollection of the Court a few of the leading rules adopted by wisdom and experience in the construction of acts of parliament. My lord Coke says, "*optima statuti interpretratrix est ipsum statutum, et injustum, nisi totâ legē inspectâ, una aliqua ejus particula judicare vel respondere.*" Every statute\* ought to be expounded, not according to the letter, but according to the intent, and a case out of the mischief intended to be remedied should be construed to be out of the purview, though it be within the words of the statute. That the title, and much more the preamble, are things to be resorted to, to explain the meaning of the legislature. The mischief recited in that part of this act regulating the arrest and transmission of offenders from one part of the united kingdom to the other, is, "That felons and other malefactors in one part of the united kingdom *make their escape* into the other, *whereby* their offences often remain unpunished."—Now, though you should not confine the operation of this act to cases of possible *impunity* by escape, yet still you must refer it to cases of impunity by some *act* or *agency* of the offender. You can by no reasonable construction refer it to the case of a man who never leaves the jurisdiction within which he was born; who betrays no disposition to evade the law, and manifests no sense of guilt by flight. Show me the possibility of a man, if this act had never existed, not being amenable to the law, who *remains* where he has done any act, capable of proof, either constituting an offence in itself, or leading to the commission of one elsewhere, and I will give up the question.

I beg here to apply the observation of one of your lordships to the question now before you—My lord said, in one part of this argument, "It would be an odd way to get at the sense of an act of parliament by getting rid of the words of it."—I am ready to determine this

question by the rule to be collected from your lordship's observation, which I presume to be, that in the construction of an act of parliament, *all* the words used in it are to be considered. It is insisted on by the counsel for the prosecution, that it avails not in what part of the united kingdom the individual who is the object of prosecution resided at the time of the commission of the alleged offence, whether within that part of the united kingdom where the offence is charged to have been committed, or in a totally distinct part of it, or, which in truth is the same matter in effect, whether he ever removed from the jurisdiction in which he is charged to have offended. Now, under this construction, I should be glad to know of what imaginable import are the words "escape and go into." The first of these words you find *usurping* a very important place in the title of the act, and one not less so in the preamble, where the mischief to be guarded against is recited, and you have them all in full array in the enacting clause: yet under the construction now insisted upon, they are not merely nugatory and useless, but occasion doubt and perplexity in a motive, which, without them, would admit of neither one nor the other.

It may sometimes be a good way to convince the understanding through the medium of the senses. Let us see, therefore, how this act will read, leaving out the words "escape and go into," and confining it to the *all-comprehensive* words relied upon by the other side, *reside* and *be*. The title, as far as relates to the present question, would run thus: "An act to render more easy the apprehending and bringing to trial offenders against whom warrants shall be issued in one part of the United Kingdom, *residing*, or *being* in the other:"—The preamble will run thus—"And whereas it may frequently happen, that felons and other malefactors in that part of the united kingdom, called England, may reside or be in that part of the united kingdom called Ireland, whereby their offences often remain unpunished:"—And the enacting part thus—"For remedy whereof, be it enacted, if any person or persons against whom a warrant shall be issued by any of the judges of his majesty's court of King's-bench, &c. or other persons having authority to issue the same within England or Scotland respectively, for any offence against the laws of England and Scotland respectively, shall *reside* or *be* in any place of that part of the united kingdom called Ireland, it shall or may be lawful for any justice of the peace of the county or place in Ireland, where such persons shall *reside* or *be*, to endorse his name on such warrant, &c."

Thus, it is manifest, that in every part of the act as it now stands, the words "escape and go into" may be left out, and the words "reside or be" will be all-sufficient for the construction insisted on by counsel for the prosecution, with this manifest advantage, that

\* 2nd Rol. 318.—2nd Inst. 386.



no doubt whatever could then be entertained of the meaning of the legislature; and whatever might be the consequences to the hitherto established principles of law and liberty, the Court would be bound to give effect to a meaning so unequivocally expressed; thus we see that the words "escape and go into" are not merely idle and nugatory, but in the construction contended for their introduction gives doubt and perplexity to what would be perfectly explicit without them.

It has been said (for what is too bold for assertion?) that the words "reside or be" are idle and nugatory, according to the construction I am endeavouring to support. This may be determined in a moment, by seeing how the act would stand without them. It would be subject to precisely the same defect under which the act of the 23rd of Geo. 2nd, on which I have already observed, labours; that is, it would only apply to persons who had escaped *after* warrant issued; and to remedy which, the act of the 24th of Geo. 2nd was passed in the ensuing year. Leaving out the words "reside or be," the enacting clause in the act now before you will be, as to this head of the argument, precisely similar, *mutatis mutandis*, with the act of the 23rd of Geo. 2nd, and therefore subject to the defect under which that act laboured, of being confined to escapes after warrant issued. The act now before you, however, following the act of the 13th of the King, between England and Scotland, does, as that had done before, by the use of the words "reside or be," prevent what without them would have been a defect, and extends the provisions of the law, as the 24th of Geo. 2nd had done as to the 23rd of Geo. 2nd, to cases where the party had not escaped *after* warrant granted. The legislative decision, therefore, as to the defect of the 23rd of Geo. 2nd, shows what this act would be without the words "reside or be;" and also shows the necessity of using them to extend the provisions of the law to cases of escape or removal *before* warrant granted. Every word, therefore, in the act as it now stands has, according to *my* construction, a full and appropriate meaning; and the words "escape and go into," though the first of them in fact gives title to the act and designates the mischief in the preamble, and though both occupy a prominent place in the enacting clause, may be altogether rejected upon *their's* as idle and nugatory; or, indeed, ought rather to be rejected as perplexing what would be clear and explicit without them.

But the most important part of this argument yet remains to be stated. I have said, that the legislature, in the act before you, could only have *escaping* offenders in their contemplation; and for this plain and obvious reason, that except in treason (which case stands on peculiar grounds, as I will hereafter show), no person, not being a native or resident of England at the time he does any act by which he may have procured others to commit

offences against the laws of England, can himself be an offender against the laws of England, or upon any principle of known jurisprudence subject to their animadversion. As this act, therefore, creates no new offence, to extend it to such persons would be *brutum fulmen*, and an absurdity of such weakness and folly as you cannot attribute to the legislature. I mentioned before, that there were words in the act now before you, and in the 13th of the king in England, which are not to be found in the acts of the 23rd and 24th of George 2nd. The words are: "*for offences against the law of England.*" Why those words were introduced into the latter acts and omitted in the former I will not stop to inquire. They show, however, manifestly, if it were not otherwise clear from good sense and right reason, that none but offenders against the laws of England can be the objects of this law; and in that point of view, I trust, I shall demonstrate, that it of necessity can apply only to persons *escaping* or *removing* out of the realm of England.

Before I proceed with this part of the argument, I will just observe, that the Union between England and Ireland, which has lately taken place, has produced no alteration in the question I am about to examine. The countries are still governed by their own proper laws and statutes; and all their municipal jurisdictions, with the exception of the House of Lords on appeals, or writs of error, are as distinct as ever: no English law, as such, is binding in this country, or *vice versa*. The laws of each country have the authority they ever had rightfully, and no other.

Crimes are of three classes, natural, moral, and municipal. The avoidance of crimes natural or moral, as such, is the duty of every man, under whatever government he is born, or in whatever part of the world he resides. Many crimes, natural and moral, are also municipal; but many are not. What distinguishes municipal crimes from natural and moral crimes which are not municipal, is the *temporal* sanction which always attends the violation of the former. The obligation to observe the latter is eternal and immutable by time or place: its sanction, however, is not of this world—not so of *mala prohibita* whether they be *mala in se* or not. Temporal sanction is their *peculiar* characteristic. With respect to them, the liability to the penalty and the duty of observance are exactly commensurate. What does it arise from?—It arises either from being a subject of the particular community whose law is in question, or an occasional sojourner there at the time of the alleged breach of the law. It is unnecessary to trouble *this* Court with the reasons which make these circumstances the sources of municipal obligation. A municipal offence may, therefore, be defined to be "an act committed or omitted in violation of a public law forbidding or commanding it, by a person bound to obey that law."



Authority, I mean rightful authority, and obedience, are of necessity commensurate; and as far as the first extends and is lawful, so far is the other to be enforced and due; I know authority often extends where it is not lawful, and obedience is enforced where it is not due, I am at present, however, talking of the legitimate boundaries of each. To constitute, then, a municipal offence, three things must concur:—first, a public law—secondly, a fact prohibited by that law done within the limits of municipal jurisdiction—thirdly, that fact committed by a person bound at the time of the commission of it to obey that law. Let us examine this by a familiar instance:—Many acts prohibited by the revenue laws constitute misdemeanors, for which the person offending may be indicted. I choose such an instance as this, because such matters are in general merely *mala prohibita*, and nothing more. Suppose, then, a native and resident of France, acquainted or unacquainted, which you please, with the revenue regulations of England, wrote a letter to his correspondent there, giving certain directions, which, if complied with, would effect a breach of that law in the person so complying; as in misdemeanors all are principals, such a person, if bound by the law, would be a principal offender. Now, I ask any one above the rank of an idiot, if such a man should afterwards come into England, could he be tried for that imputed offence upon any principles of known jurisprudence? Let us ascend then a little higher in the scale of municipal offences:—Suppose a native and resident of France procures a robbery to be committed within the realm of England: if the person procuring such an act to be done resided within the realm of England, he would be an accessory before the fact in felony, and as such might be tried and punished. If the procurement, however, were out of the realm, as it would be in the case supposed, he would have committed no offence against the laws of England. He will fall into great error on such subjects who confounds municipal with moral guilt. The latter, *as such*, is no subject of municipal cognizance; therefore, by the *common law* of England, if two Englishmen go into a foreign country, and fight there, and the one murders the other, the *lex terræ* extended not thereto; and in the case supposed, of a felony procured by a native and resident of another country, to be committed within the realm of England, there is no form of proceeding known to the law of England by which such a person, even arriving afterwards within the jurisdiction, could be proceeded against or punished. If any man doubts as to this position, I would ask him, what grand jury of England could indict for this alleged offence? Not the grand jury of the county where the principal felony was committed; for the party had done no act there which could give them authority to present.\* At common law, where

the person procuring the felony to be committed resided in a different county from that in which the felony was committed, it was extremely doubtful whether he could be prosecuted at all. This, however, as to accessorial offences in felony committed *within the realm*, was remedied by the 2nd and 3rd of Edward 6th, whereby it is provided, that accessories in murder and felony may be indicted *in the county* where the accessorial offence was committed, though the principal felony was committed elsewhere; and it provides for procuring a certificate of the attainder of the principal, without which the accessory could not be tried. In the provisions of this law, we perceive how scrupulous our ancestors were in adhering to the common law principle, *ubi deliquit ibi puniatur*. If A. residing in Cornwall, procured a murder to be committed in Middlesex, he could not be proceeded against in the latter county, but must be tried where he had done the act, from which a felony had resulted elsewhere. There is no law in England by which any crime, under treason or murder, committed abroad by a subject of England, or by which any felony *procured* to be committed within the realm of England by a person resident abroad, can be prosecuted or tried in England. Treason and murder are exceptions to this rule, and for reasons that extend not to other offences. Treason is a personal contract, if I may so speak, with the sovereign, that follows the individual into whatever parts of the world he may go—on the banks of the Thames, or the banks of the Ganges, he is equally a subject, and responsible for his duty to his prince. This duty is attached upon him at his birth, and nothing but death can set him free. But even with respect to treason committed *out of the realm*, the common law principle I have mentioned was found too stubborn to bend; and therefore the 35th of Henry 8th makes treason, misprision and concealment thereof, done out of the realm of England, triable by the King's-bench, wherever it shall sit, or by commissioners to be appointed by the king. As to murder, it is not more an offence against the particular community than against human kind at large; it is, as it were, treason against humanity: God himself has denounced the offender, and all mankind have his licence to pursue the murderer; and such was the opinion of Cain when he said, whoever should find him would slay him. Therefore the 33rd of Henry 8th, c. 23, which, as to murder, is not repealed, gives power to try murders committed out of the realm to commissioners appointed pur-

law of England. I admit the statute of the 10th of Charles 1st, in this country, renders a person resident out of the realm, and procuring a felony to be committed within it, liable to be tried where the principal offence is committed. This, however, is only another exception, by statute, to the common law rule."—*Orig. Ed.*

\* "The reasoning here is grounded on the



suant to that act. It is however held, that this act does not extend to accessories, 2nd Hawk. 569, 6th ed. These acts, extending the arm of municipal authority out of the realm, in the extraordinary cases of treason and murder, to which, by the received principles of common law, it could not reach, show in the most striking manner the boundary by which the municipal law of England is limited.

From the same limitation, in point of principle, of the common law of England, it was found necessary to provide, by particular statute, for the trial of treasons and felony committed on the high seas; and this was done by the 28th of Henry 8th, c. 15.

Thus we see, that the common law of England could not travel an inch beyond its shores; and wherever it was necessary to extend the authority of the law of England beyond that limit, it was necessary to have recourse to what my lord Coke calls the omnipotence of an act of parliament; and that even those acts have never ventured to embrace any offences abroad but treason and murder, and felony upon the seas. The statute of George 1st, providing for the trial of offenders in murder, where the stroke or poisoning happens abroad and the death in England, and *vice versa*, is of the same description.

From a review of these statutes it is manifest, that where a felony is committed in England, by the procurement of a person not resident there, such procurer cannot be tried by any known principle of law, or by any particular statute. I shall not be contradicted when I assert, that in such case there *can* be no offence against the law of England; that there does not exist an appointed mode for trying the offender; and if I can show an act that, physical impediments being removed, cannot be tried by the law of England, I show an act that is no offence against the laws of England.

The prohibition of unwritten, as well as of written law, may be reduced to precise terms. When the law, whether common or statute, prohibits any particular thing to be done, its language is, "if any person or persons," &c. And whom does it mean by these words? Not all the world; it would be ridiculous nonsense, and mere *brutum fulmen*—it means subject or resident. Extended beyond that meaning (with some exceptions perhaps, as piracy, warranted by the *law of nations*) it would be a law of force and tyranny. The principles I have laid down apply to all offences against the laws of England. Let us, however, consider them a little more particularly with regard to misdemeanors:—In all felonies not capital at common law, and in all criminal trespasses, there are no accessories. This rule is adopted in such cases, on account of the exility of the offence, *quia de minimis non curat lex*. Any person who would be an accessory before the fact in felony, would, if the principal offence were a misdemeanor, be

himself a principal offender; and, *vice versa*, any person who procures a misdemeanor to be committed, would, if that misdemeanor were a felony, be an accessory before the fact; and no person procuring a misdemeanor to be committed, could be punished as a principal offender, if that person would not be, upon the supposition that the offence were a felony, an accessory *before* the fact, and triable as such.

Let us suppose then, for a moment, that the publication of a seditious libel, were a capital felony by the law of England—it is manifest, that, if there be any foundation whatever in the charge against the gentleman now before you, it must be for acts done by him *here* procuring the publication in London, that is, for acts done by him, which, if done within the realm of England, would make him, in case the offence amounted to felony, an accessory before the fact to the crime in England. Those acts, however, be they what they may, if done at all, took place out of the realm of England, and beyond the sphere of its municipal jurisdiction. As the law of England stands, I should be glad to know if the principal offence were a felony, where the party accused of such act of procurement could be indicted?—The argument, therefore, on the other side, is this, that if a person, not a subject of the municipal law of England, and resident out of the realm, were to procure the city of York to be consumed by fire, and were to land the next day in England, he could not be tried for any known offence against the laws of England,\* for an offence without means of trial or punishment is nonsense; but if the same individual, under the same circumstances, had procured any person to kick a scoundrel in England who had insulted him, the mighty powers of the state are all to be set in motion, and if he were a native and resident of Ireland, he might be dragged from Donegal to London, there to expiate his crime by a fine of a mark; or if he were a native and resident in any other country, and should, at any future period of his life set his foot in England, he might be indicted and tried for an act, for which, if it had procured the commission of a felony, he could not be tried at all.

But it will be asked, shall offences instigated by persons resident without the realm to be committed within it, go unpunished? Let us recollect, that we are now talking of municipal offences, which, merely as such, have nothing to do with moral guilt. If by the word offence is meant the act done by the person resident out of England, it is begging the question to call it an offence against the law of England: but if the question be, shall

\* "How a person thus circumstanced might be treated according to the law of nations makes no part of the present discussion, which is confined to municipal obligation merely." *Orig. Ed.*



the fact committed in *England* be committed with impunity? I answer, no. In the case of a libel, for instance, procured to be published in *England*, every person guilty *there* of publishing may be punished to the utmost satiety of revenge; fine, imprisonment, pillory, and whipping, form the ghastly train of the chief informer of the crown---that he should be able to travel with these in his rear from the English Channel to Solway Frith, and from the German Ocean to the Irish Sea, might, one would think, satisfy his appetite for power. Could it have been the intention of the law, in destroying the distinction of principal and accessory in misdemeanors, to give a wider sphere of power to municipal law in misdemeanors than it has in cases of felony, and that there should be a sort of magic in the pettiest offences that will bring an individual, residing in a realm utterly foreign as to municipal law and municipal jurisdiction, procuring a misdemeanor to be committed in another country within the pale of an authority, which, if he had procured a murder to be committed within it, could not reach him?

What is the true principle in all such cases? Why, that subject or resident are the true boundaries of municipal jurisdiction---the one a duty cast upon us at our birth; the other imposed upon us by our own act for a time: that, in either case, our obligation to obey, and, of course, the right of the state to punish, arises from\* our own consent, either actual or necessarily implied: that there is a marked distinction between being subject to the king, and subject to the laws of *England*. In the former case, we may commit treason any where; in the latter, we can only offend as an original subject, or a temporary resident; and that, in all cases, legitimate authority and legitimate obedience are exactly commensurate, and that to extend either beyond their true bounds, would be force and tyranny, and not law.†

But let us consider, for a moment, what object is answered, or intended to be answered, by putting this construction upon the present act of parliament---a law which, let the construction of it be what it may, it is admitted on all sides, was passed to prevent offences remaining unpunished. It now appears, that not only previous to the existence, but previous to the *possible* existence of this alleged

libel, the gentleman now brought before you was in *Ireland*, and has been a continuing resident therein from that time to the present. It is sworn, and not denied, that the paper containing those supposed libels, was *first* actually published in *London*. If therefore the defendant be guilty of that or any subsequent publication *there*, it must be by procurement, and the act of procurement must have been committed *here*. That act of procurement must be given in evidence wherever the trial shall be had, if there exist any hope of an effectual prosecution. Now, whether that act of procurement (if any act of procurement ever existed) consisted in writing the libel himself in this country, or copying it if written by another, or sending it whether written by himself or another to *England* for publication, there is no imaginable act by which the publication in *London* could be procured, that, if done by the defendant, must not have been done *here*. If done *here*, the witnesses to that act of procurement, whether by writing, copying, or sending, must reside *here*. Wherever the trial is had, that fact, be it of which of those enumerated descriptions it may, must be proved. It is sworn, and not denied, that the indictment stated in the warrant of the chief justice of *England*, has been found on the information of persons resident in this city. It is also sworn, and not denied, that the papers containing the alleged libels have been publicly sold in the city of *Dublin*, and are now offered, and to be had there for sale. It stands therefore admitted, that if any evidence whatever exists, either of procurement or publication, which can at all apply to the defendant, such evidence can be given in the city of *Dublin*. It is sworn, and not denied, that the circumstances about which the papers containing the alleged libels treat took place in *Ireland*, and it appears from the return, that the persons supposed to be attacked are resident *here*---so that if the offence complained of have any existence at all, and is proveable any where, it took place and is proveable in *Ireland*. The matters about which the papers alleged to contain the libel in question are conversant relate exclusively to *Ireland*, and the persons complaining of any imputations cast upon them are resident *here*. The alleged offence took place *here*, the alleged offender is on the spot, the persons complaining reside *here*, the matters in question relate to this country, and the evidence, if any can be had to affect the gentleman now before you, exists within the limits of this metropolis; yet it is sought to try this question at a distance of 400 miles, where the accused can have no witnesses, and where the transactions upon which the question of libel or no libel must turn are utterly unknown.

Now the real and exact truth of any particular transaction forms but one, opposed to the thousand combinations of circumstances which prejudice, ignorance, malice, or corruption may put together as representing it; and

\* See 4th Blackstone's Commentaries, p. 8.

† "No legal mind will confound the reasonings here on the principles of the criminal law of *England* with what takes place in transitory civil actions, which, if the parties come to reside in *England*, may be tried there, though the cause of action arose out of the realm. In such the obligation, upon which the action is founded, is of no place, and follows the person; but, even in such case, the contract must be tried by the law of the place where it arose, if different from the law of *England*." *Orig. Ed.*



the farther you remove from the scene of action, the more the chances are diminished that this real and exact truth will appear. The motives, therefore, for subjecting the investigation of this business to a foreign tribunal, can scarcely escape the dullest apprehension.

In the course of this discussion, I have heard a strange doctrine stated, that the *pax regis* in Ireland and the *pax regis* in England were altogether distinct, and that the same act might be a violation of each, and therefore punishable by distinct prosecutions. No doubt this is a convenient doctrine for a law officer of the crown; it is, however, a new one, and deserves to hold a distinguished place in modern discoveries. With respect to the king, I thought his subjects were not Irish subjects, or Scottish subjects, or English subjects, but subjects merely of one common king, and that the *pax regis* was the same in every corner of the United Kingdom, though the protection of it was meted out to distinct jurisdictions and authorities, and regulated by distinct laws. Ireland and England have been connected about 800 years, and England and Scotland about 200. About four years have elapsed since the two first were united, and near a century since the union took place between the two last. The relation either of Scots or Irish to the king has been no way affected by these unions. Why then was this discovery of the distinct peace of the king, or rather of the effects flowing from it, reserved for these times? Though the grounds upon which this discovery rests are concealed, the object of it at least is candidly avowed—it is to try the gentleman now before you in each part of the United Kingdom to which the publication charged upon him as an offence has reached; and the first experiment is to be made where he can make no possible defence. Is it that gentlemen deceive themselves, or that they hope to deceive others? If the latter, I am inclined to give them as little credit in point of sagacity, as I am disposed to allow them their full share for an ingenious refinement in the law of pains and penalties, that had escaped all their predecessors. But, so long as the principles of the law of England are cherished and adhered to, allow me to say, that if there had been ten thousand publications of the libel (if it be one) in question, and that such publication took place in every district of the wide extended dominions of our sovereign, and that you could prove but one act of procurement or of publication against the defendant, you could never try him but once as long as any respect remains for the principles of our law.

But let us return, my lords, to the statute now before you.—I can imagine, if you will, an act, loose and ambiguous in its terms, passing the legislature: I can imagine (for who that reads the history of these countries can avoid it?) the persons employed in a crown prosecution wishing to make an oppressive use of an act so worded: but I can-

not imagine a constitutional court of law, where two opposite constructions are supported by such arguments as you have heard, adopting that which gives a mortal wound to private right and public liberty.—I cannot account for the bold hope which has supported those whose arguments lead to such violations—for the daring expectation, that in this place they would find the means of accomplishing the ruin of the constitution; that, not content with consuming the awful temple of our liberty, they are rash enough to drag for this purpose the fire from its altars.

In the desire, then, to remand this gentleman, let us see, my lords, in a few words, what you are called upon to do:—you are called upon in a case, bailable *ex debito justitiæ*, to consign him to imprisonment in the country which gave him birth, and where his connexions lie.

You are called upon to send him, with an insulting mockery, to look for bail in a country where he may have no acquaintance, much less a friend.

You are called upon under an act, passed, as it expressly imports, for the apprehension of offenders who escape, and whose offences thereby remain unpunished, to transmit to a foreign country (foreign as to laws and jurisdiction) a person who never escaped, and whose offence, if any, can be punished where he is.

You are called upon, under the magic of a legal fiction, to send a man to be tried 400 miles from the place where he could have done any personal act whatsoever, and under such circumstances, as that, if the offence he is alleged to have procured were a felony, you could not reach him.

You are called upon, to send him to be tried by a jurisdiction, and under a system of laws, to him, in a municipal sense, perfectly foreign; and that in a case in which, if he has been guilty of any offence at all, his offence is complete in his own country.

You are called upon in an avowed state prosecution, to send him out of his own country, with the public purse in the hands of his prosecutors, to be made use of for all purposes which may be deemed *expedient* to establish the crime against him, without any possible means, on his part, of rebutting it by proof.

And you are called upon to do all this, to enable the party complaining to avoid a trial on the merits; and, by the same decision by which you strengthen the hands of the prosecutor, to strip the accused of all possible means of defence, and that in a case of *acknowledged* doubt upon the construction of an act of parliament.

You are called upon to run the chance of doing wrong (I do not surely state it strongly, when even among the learned judges of the land there exists strong difference of opinion), in favour of avowed oppression, of undisguised hardship:—and to what end?—To give security to an abuse of power, and to strip the ac-



cused of the right (for right without means is mockery) of defence.

For my part (let others enjoy *their* triumphs), I shall feel a satisfaction to the end of my life in having made a struggle, however ineffectual, to uphold the acknowledged maxims of our law, the eternal principles of justice, and the common rights of humanity!

I know I shall have the sympathy of the good—I look to the gibes of the unfeeling.—Welcome both—in resisting “the oppressor’s wrong,” I may expect “the proud man’s contumely.”—I shall feel, however, what he never can, that peace of mind, which, like the peace of God, passes the understanding of the wicked.

Mr. Prime Sergeant.—The gentlemen to whom I am opposed, seem fairly to have divided the subject between them. One has taken the argument, the other the eloquence: one the reasoning, the other the wit. As to eloquence it is beyond my reach, and in my humble conception misplaced on a mere legal question; as to jokes, I am a bad jester, and therefore I shall beg leave to reply to the argument.

I have however the greatest respect for the extraordinary talents of the learned gentleman whose oratory has produced such a vast effect, for the uncommon resources of his mind and quickness of his genius, always able at the instant (to use his own phrase) to draw at sight upon those resources; but I cannot avoid thinking, that in the alembick of his imagination, the argument often evaporates, and we are to search for any residue of reasoning, not in a bushel of chaff, but in an ocean of fancy. When I heard my learned friend, on the interpretation of an act of parliament, say he would not submit to the drudgery of verbal criticism, I could not but smile; and when after a most beautiful declamation of an hour he said, but now let us come to the subject, it reminded me of the famous lines,

“To serious council let’s advance;

“But first let’s have a dance.”

The argument which I am to answer is twofold; first, that the act of the 44th of the King, ch. 92, doth not extend to libels or any inferior crimes; secondly, that if it doth, it at most extends only to persons who, having been guilty or charged with such offences, and warrants thereupon being issued, escape from one country into the other.

To answer these objections, we must endeavour first to find out the object of the act, and secondly to examine its words and its provisions.

The object I conceive was, to put Ireland, after the Union, on the same footing with respect to England that one county in England had formerly been to any other county in England, as far as circumstances could possibly admit: what else could be the object? Could it be

merely to empower a justice of the peace to back warrants? Can I believe, that an enlightened legislature meant to reserve to any offender in Ireland the liberty of diffusing mental pain and misery over the empire, like a baneful comet, and then shelter himself in the nucleus of this our little residence—could this be the intention? It would be a proclamation for abuse, an avowed indemnity for scandal, a premium of security for malice and revenge; and every man in England might fully vent his spite against his neighbour through the medium of his friend or acquaintance in Ireland.

From the monstrous absurdity of such a construction I proceed to show the real meaning and object of this law, from a consideration and review of the acts upon which it was founded, and of which it was composed; these are the 23rd of Geo. 2nd, ch. 26; 24th Geo. 2nd, ch. 55, and 13th Geo. 3rd, ch. 31.

By the common law, the power of finding an indictment for an offence in any county being confined to the grand jury of that county, and the power of justices of the peace confined to their respective counties, if an offender escaped from one county into another, he could not there be arrested without a fresh warrant from a magistrate of that county into which he had escaped, who had no power of admitting him to bail, but could merely remit him to his proper county. To remedy this inconvenience in part, an illegal custom had been introduced of backing warrants, the magistrate of one county indorsing the warrant of the magistrate of the other. To legalize this practice, the statute 23 Geo. 2nd, ch. 26, was made.

But as this extended only to persons escaping, and also omitted to give a power of bailing to the second magistrate, the legislature, considering that crimes might issue as it were from one county, and be propagated into another, and there take and complete their sole or full effect, where, perhaps, the offender in person might never have been, added to the words of the former act, which provided for the arrest of persons *escaping* or *going into* another country, the words *or who should there reside or be*; all this will appear by reference to the words of the acts themselves.

Thus matters stood when it was observed, that still the case of a person escaping, *going into, residing, or being* in Scotland, and having committed in person, or by transmission of his crime, an offence in England, was not provided for, though Scotland had been united with England: the statute 13 Geo. 3rd, ch. 31 was therefore made, providing for that case as well as for the mutual event of persons committing offences in Scotland *escaping, going into, residing, or being* in England; the power of bailing the person arrested, however, was not given, for this plain reason, that the law would not entrust a common magistrate in Scotland with the power of determining or judging, whether an offence was bailable in



England, or *vice versa*; nor if it had entrusted to him such power, can it be imagined, where or how the recognizance of bail could be returned.

From these several statutes, the present statute 44th of the king was formed; and surely knowing the objects and intentions of those statutes and its component parts, we cannot be at a loss to know the object, the scope, and the nature of the composition; it was to put Ireland and England on the same footing and relation with respect to each other that any one county in England had been to every other, as far as the nature of things would admit, which was found, as in the case of Scotland, not to extend to the admission to bail of persons charged with offences, until they had been transmitted to the country where they were to be tried.

Having thus far argued from the intention and scope of the legislature, and the acts from which the present is derived, I proceed to support my construction of this statute:—from the very plain words which it contains, it puts four cases—*escaping, going, residing, being*; the words are, *if any person against whom a warrant shall be issued, as therein, for any crime or offence against the crown of England or Scotland respectively, shall escape, go into, reside, or be in any place of that part of the united kingdom called Ireland*. The legislature meaning by the first case, an escape by a person conusant of the warrant having issued; by the second, his going into the other country on account of business, or pleasure, not acquainted with the issuing of the warrant, nor flying from it; the third, the case of a person resident in Ireland, who might, or might not, have been at same time previous in England; and, fourthly, the legislature recollecting, that a person neither escaping nor going from England, or Scotland, nor a regular resident, nor having a fixed domicile in Ireland, *might happen* to be there, included this case also; and thus all the words of the statute have their plain and respective distinct meanings. The two latter words, therefore, *reside, or be*, are not superfluous: but it is said, according to our construction, the two former would be so; we may retort the argument and say, according to your construction, the two latter would be so.

But it is said the two latter words refer to the case of going from one country to the other before warrant issued, the two former to going after warrant; admitting, that they refer to a case before warrant issued it is not confined to persons going to, but in general to persons *residing* and *being* in the other country before warrant issued. According to this construction, therefore, the latter words are not superfluous; but even, if according to our construction, the word *reside*, or the word *be*, would have been sufficient, no staple argument can hence be drawn, inasmuch as it would only follow, that the legislature had too servily copied the language of former acts,

and distinguished what needed no distinction: and as to the supposition of a distinction between cases before and after warrant, those words though used in the English acts of Geo. 2nd, are in the present act totally omitted, and cannot apply. If the words then are plain, what is to check or control them? Why, it is said, the word *ESCAPE* only is used. It may be observed, that this argument excludes persons *going into*, and who could not properly be said, to *escape*; and it might be answered, that *escape* might here have been used, and in its vulgar sense, and in the language of conversation, for any *evading* of justice, though not by actual flight; and that if we look to preambles, we should look to the general preamble of the whole statute, and not to particular clauses. But the better answer is, that it is a well known rule of law, that however a preamble may tend to illustrate doubtful words, it never can control or alter an enacting clause, couched in plain terms; and such I insist this to be. This principle of law is most clearly laid down by the greatest judges—by lord Hardwicke, in the case of *Basset v. Basset*, 3 Atkyns, p. 205, where he says, that if enacting words can take in the mischief intended to be remedied, they shall be extended to it, though the preamble doth not warrant it; and in *Robinson's case*, 2nd East's P. C. pages 1110 and 1113, judge Buller says, "Where the enacting clause of a statute refers to such offences only as are contained in the preamble, it may be restrained by the preamble; but in this case it would be doing violence to very plain words, and repealing some of the obvious provisions if it were so restrained." So I say here; judge Buller truly adds, "It is no uncommon thing for the preamble of a statute to recite a particular mischief, as the cause of making it, and yet for the enacting part to embrace more general objects, and to extend to other cases, which the legislature thought within equal mischief."\*

But it is said, that even supposing that the statute is not limited to escapes, it doth not reach offenders inferior to felons; that this statute speaks only of felons and other malefactors, and that the author of a libel is not a malefactor in the legal sense. Mr. Curran has defined a malefactor to be a man who commits some gross violation of public duty: is not a libeller such a man? but I define it an evil-doer; it is the literal English of the word, and includes all offenders; and accordingly Mr. Justice Blackstone, in the 4th volume of his Commentaries, ch. 21, p. 292, translates it by the word *OFFENDERS*, when speaking of the act, 13th of the King, relative to Scotland, above-mentioned; and I add, that unless it be so construed it is useless, and the word felons would do; whereas it is plainly used in contra-distinction to felons: let me here observe too, that the statute is said not

\* 2 Leach, 765, *Robinson's case*.



to extend to constructive offences. This is not a constructive offence.

The next argument is, that according to our construction of this act, it repeals the Habeas Corpus act; which never would have been intended, and therefore our construction is false. To try this argument and the truth of it, trace and examine the origin and progress of the Habeas Corpus act, and the mischief it was intended to remedy, and it will immediately appear how totally inapplicable the facts relative thereto are to the present case; we shall find the mischief recited so early as the reign of queen Elizabeth, when the judges addressed the chancellor and treasurer, stating, that divers persons had been imprisoned for suing ordinary actions, and when writs were directed to the persons imprisoning them, have been removed to secret prisons, so that the Court could not learn to whom to direct the writs.

In the reign of Charles the first, the evil had grown to an enormous height. Mr. Stroud, Mr. Hollis, Mr. Selden, and other men of justly celebrated fame, were imprisoned for freedom of speech in parliament; they applied for a Habeas Corpus, and the judges of the King's-bench were of opinion to grant it; when, behold, they could not be found! the king had removed them to the Tower by his own authority; and, when the Court applied to him to know what was become of them, the king answered, that having been very impertinent to him, and also, as he understood, to their lordships, he had thought proper to prevent their having the benefit of the Habeas Corpus, a privilege founded on Magna Charta.—See Stroud's case, 7 State Trials.\* These crying grievances called first for the Petition of Right, and afterwards for the famous Habeas Corpus act, 31 Car. ch. 2, which enacts, "that for preventing illegal imprisonments beyond the seas, no subject shall or may be sent to Ireland, Jersey, Guernsey, &c. &c. provided always, that if any person or persons, at any time resident in this realm, shall have committed any capital offence in Scotland or Ireland, or in any foreign plantation, where he ought to be tried, such person may be sent to such place to receive his trial, in the same manner as might have been used before the making of this act."

What was the evident intention of this act? Not to skreen crimes; not to give general impunity for offences; not to encourage any man to do wrong, or to injure his neighbour; not to promote licentiousness; but to protect real liberty, and to prevent illegal imprisonment. Who were the framers of this act? The most true and real patriots who ever were in England; the men who first and vigorously opposed the encroachments of Charles the first; and when they found the king complying with reason, and willing to sacrifice all his prejudices to the truth of the constitution,

fought and bled in his defence, against the violence of republicanism. Such was lord Falkland, and such was lord Clarendon. And were all these noble struggles for the glorious liberty of doing mischief? How would these illustrious men have spurned at such an explanation! How would they have repelled such an insinuation! How would they have lamented this perversion of liberty, and of its most adored instrument, the Habeas Corpus act! How would they have exclaimed, Did we sacrifice our time, our peace, our property, our lives, in support of the constitution, to be quoted as the instruments of licentiousness, and the patrons of violence and of wrong?—Away with such idle fancies, such sophistical abuse of words! They did not insert misdemeanors in the act, because they did not think of excepting in the Habeas Corpus act such a case. Will you believe, that if they had reflected on the possibility of such a case as this, they would not have included it in the proviso?—The present act includes misdemeanors, and, in so doing, it doth not repeal the Habeas Corpus act; it only elucidates, and explains, and extends the real spirit of it—the name of the Habeas Corpus act is introduced in fallacy, to captivate the ear of liberty, and catch popularity in the lures of injustice.

The next arguments suggested are, *ab inconvenienti*; the party cannot be bailed until he lands on the shore of the other country; and therefore it is impossible the law should extend to misdemeanors. The premises I admit, the consequences I deny. I admit that the power of bailing in the county where arrested is omitted, and omitted advisedly, and upon consideration; but deny that, therefore, misdemeanors were not intended to be reached and included; an inference which might be fair, if the power of bailing were possible; but until it can be shown to me where or how a recognizance of bail could be taken before transmission of the prisoner, or how it could be returned, I must insist upon its impossibility. Suppose the libel published in Cumberland, and the libeller resident in Ireland, who is to take the bail, or in what manner is he to return the recognizance? Is he to send it by post to Cumberland? Is he to go with it himself? Who is the officer to carry it?—And, if it were carried, who is the person, what the office there to receive it? The framers of the act considered the feasibility of this provision; the objectors to the act well know its impracticability.

It is observable, that the argument that this law doth not extend toailable offences, is overturned by an understood provision in the act, that the party shall beailable the moment he lands in England; and the hardship is mutual; for the Englishman, arrested for a libel published in Ireland, could not be bailed until he landed here; and, even if this omission of bailing in the country where ar-

\* 3 Howell's State Trials, 235.



rested, were owing to accident and not to design, we must obey the law until corrected. Arguments from inconvenience cannot subvert positive law. But what hardship, or what inconvenience, can the defendant here complain of? An offer was made to him, and he was even requested to give bail, with an earnestness to accommodate him, perhaps not altogether supported by the powers of the act; but if it was an excess, it was an excess of benignity, of which surely the person favoured cannot complain.

But, say my learned opponents, what a grievance is this! They declaim with infinite pathos on the hardships thus imposed upon the offender; but doth he not bring this hardship upon himself? Can he complain of mischiefs of his own creating? Had he kept his tongue from evil speaking, quietness and peace would attend his habitation, and spread the curtain of security over his dwelling.— Shall the man who sends forth his poisoned arrow be angry if it rebound and wound himself? Shall he who troubles the waters complain that he is swallowed in a vortex of his own creation? or shall we pity the man, who, from his rocky promontory, aiming a deadly blow at one who never offended him, loses his balance, and is hurled into an ocean of distress? He pitied not others, shall he himself have pity? I speak not of the present case—I speak not of any particular case—I argue on possibilities, on general reasoning, on notorious and analogous facts.— This hardship, which is said to render our construction impossible, actually existed between Cumberland and Cornwall, between any two counties in England, down to the 24th year of the reign of George the 2nd.

The powerful oratory of my opponents still rests on the imagined case of a man dragged to Scotland, a country governed by different laws, by laws of uncommon severity, by laws to him unknown. Hard it may be—but let him then, if the laws of Scotland be additionally severe, be more particularly careful not to invade them; let him remember the motto of the country—*Nemo me impune lacessit*; and let him reflect on his argument and his claims. What is it? Give me free liberty to offend in Scotland; permit me to set every man in Edinburgh against his neighbour; allow me to disturb the peace of all the families in Scotland whom I choose to devote to unprovoked insult and abuse, because, forsooth, the law of Scotland is severe and unknown to me; and let me proclaim to every malicious man in that country, that he may with impunity attack any of his countrymen, by coming to reside at Belfast.

The next cry, addressed by deception to ignorance, is, that this is an *ex post facto* law. For lawyers, surely, it cannot be intended.— Is any legal man ignorant that an *ex post facto* law is that which punishes for a deed previously committed, and only made criminal by the law itself? Doth the present act, for

the first time, make libel a crime? It alters and regulates the mode of apprehending the criminal. And what says the person charged—“Really I am injured; for, though I may have committed the offence, I relied upon it that I could not be caught; and, indeed, you have done me a mighty grievance by pointing out a new method of getting me. It is not fair! Why did not you tell me of this before?”—Is not this too ridiculous to require an answer?

Mr. Johnson has superadded to the arguments advanced by other gentlemen, others more ingenious than substantial. Without dwelling on the specious subtlety, that the words “no sufficient provision” show, that the act was not intended for a case for which there had been no provision (a technical objection which would scarcely occur but to lawyers—often as apt to smile inwardly at their own inventions as to produce them), I hasten to his assertion, that no man can be affected for any offence against the laws of a country in which he never resided. Your lordships have desired me not to lose time on this position, intimating, that it hath not weighed with you; yet I cannot help putting this case:— Suppose a man in Ireland contrived, by the intervention of an innocent person, ignorant of the contents, to send a box of poison to his private enemy, a Frenchman, at Bourdeaux, to whom his hatred had commenced in Ireland, he himself never having been in France, would he not be tried for murder here? or if untried, he should be afterwards found in France, could he not be tried for murder there? He is evidently a principal—not an accessory. Is he never to be accountable, except to the tribunal of heaven?

But, saith the learned counsel, an accessory to a felony could not be tried in England; and, *a fortiori*, when such a strong case is omitted, petty misdemeanors we never can believe to be included. The legal doctrine as to offences committed out of the realm, and as to accessories, must be traced through the different acts: by stat. 33rd Henry 8th, ch. 23, in England, murder committed out of the realm might be tried there; the 35th Henry 8th provided as to treason committed out of the realm (see 2 Hawkins, 569, and 1st East's Criminal Law, page 369). The 2nd and 3rd Edward 6th, English, and 10th Charles 1st, chap. 19, Irish, provided for a wound at home and death ensuing from it abroad; as it doth also, for the trial of accessories at home to offences committed abroad. Upon the whole, it is true, that an accessory in Ireland to a felony in England, who had never been there, could not there be tried; though by the Irish statute, 10th Charles 1st, chap. 19, he may be tried here. But how doth this apply to the present case? This hath been called an accessorial offence. In misdemeanors there can be no accessories; but if there could, I should be glad to know who is the principal here? Was it the post-rider, the mail-driver,



or the friend who may have carried the libel to England? Is it not evident that there can be no accessory here distinct from the principal? The reason, says the learned counsel, why the accessory in Ireland to a felony committed in England cannot be tried in England is, because he never was subject to the jurisdiction of England. No, that is not the reason: the reason is, because he never committed any offence in England; the principal offended in England, but the accessorial offence was committed in Ireland, and there only. But how doth that apply to the present case? The offender here is a principal, and the offence, viz. the publication of the libel, was committed in England.

And here I cannot but smile at a minor argument which has been hazarded; that as the prisoner must be either remanded or discharged, if you have any doubt, he must be discharged; for that it cannot be said to be a decision *per legem terræ*, if you have any doubt. Do my learned friends mean, that every judicial decision which is alloyed by the smallest grain of doubt is void by the *lex terræ*? What infallible judges do they look for! What infallibility do they promise if they should ever be in that situation! What happy dogmatism! What undoubting confidence do they suppose in the judges of the land! How disgraceful to lord Mansfield and lord Hardwicke to have doubted so often as they did!—It reminds me of the happy satisfaction in his own knowledge enjoyed by a foreign priest, who, to a friend of mine discoursing with him on free-will, fixed fate, foreknowledge-absolute, answered, *hæc omnia tibi facillimè explicabo*; but my friend declined his kindness.

I have now discussed all the arguments of my learned opponents which I find on my paper; and they are too well used to laugh themselves, to be angry with me for a little risibility, when I review the remainder of my abstract of what they have said (somewhat resembling the broken memorandums which Addison hath given us in the Spectator, of projected essays); bishops and petticoats, valets and ministers, *maxima quæque domus*, and *nil admirari*, together with a splendid declamation on the abuse of time, are short specimens of topics which have amused the ear, without being even intended to affect the judgment.

Quotations indeed from the classics—rich and abundant quotations from the classics I do find, possibly rather too thickly larded; and, perhaps, I might say, *Io anche sono pittore*; but were I a college man, in my turn to cap verses, I should be said, as Smollet says of Addison, to come down with my satchel on my back; and I could not boast like my learned friend, *omnis Aristippum decuit*.

Before I conclude I must remark the hardship which has been put upon the replyer by the varying and fugitive nature of the defence. In another court, the learned judge who gave

his opinion so ably in favour of the defendant, relied upon the statute relating only to escapes, but rejected with decided slight the argument, that it did not extend to misdemeanors; and in this court no two gentlemen seem to have agreed upon the same grounds, nor any one to have adhered long to that which he originally chose for himself: one says, that it doth extend to persons guilty of misdemeanors if fugitive, not otherwise; another, that it doth not extend to misdemeanors at all; and a third, who began the contest, admits, that the literal sense of the words includes this case, but that the sound construction of the statute excludes it, and that locality of person, not of offence, gives jurisdiction (a doctrine certainly perfectly new), and that his offence may be transmitted innocently if not accompanied by himself.

Much has been said of the origin of warrants by secretaries of state, and lord Camden's argument in *Entick v. Carrington*, and of lord Sanquaire's case, 9th Coke; how they apply to the present case it is not easy to conceive. I shall only note the Irish act, 6th Geo. 1st, chap. 12, in which the warrant of any judge of the King's-bench in England to apprehend an English felon in Ireland, backed by the authority of the lord lieutenant here, is recognised as legal; and as to Wilkes's case, there never was such a perversion of an authority, *ad captandum Vulgus*. Wilkes, a member of parliament, was called upon, not to stand a trial, nor to give bail to stand a trial for a libel, but to give securities for keeping the peace; and it was determined, that a libel not being a direct breach of the peace, he was not bound to give such sureties; and hence it has been most sagely argued, that no bail is required for a misdemeanor. Need I be more diffuse on this topic? *verbum sapienti*.

I come, in the last place, to the affidavits which have been made upon this occasion, and properly made, as they do not controvert the return:—It is observable, in the first place, that they do not swear to innocence, but chiefly insist that the trial for the libel might have been in Dublin: it is observable, also, that they do not identify the libel published here to have been the same which was published in London. But supposing that it was the same, and that it might have been tried here, without dwelling on a severe, but true remark, that this would be sheltering a man under the multiplicity of his offences, I ask, is the offender, where he may be tried in two places, to select which he chooses? is he, perhaps, to select that in which he cannot be convicted? and is he to determine in what manner the prosecution shall proceed with least hopes of success? The publication in England is easily proved; the fact of putting it in the post-office, or otherwise transmitting it from Ireland, it may be impossible to prove. The publication in England must have been voluntary—the republication in Ireland may have been against the will of the writer.



I have thus, my lords, endeavoured to do my duty, certainly a very painful one, to the best of my power. I am fully sensible, however this business may terminate, that the bench and the bar of Ireland will long have cause to rue it. I have endeavoured to abstract the case from the individual, and to argue it as an abstract point of law. The learned judge must know, that I can bear no personal hostility to him—we have been long neighbours and acquaintances—his family and relatives and mine are in habits of intimacy and friendship; I sincerely hope he is innocent of a libel, which I must call abominable and atrocious, on the first, most illustrious, and most amiable character in the land. I sincerely hope, that it is impossible he should, in his high situation, unprovoked, compose so scandalous a libel; and with the benignity of the law, I have a right to consider him as innocent until he be found guilty.

Considering, then, the question as an abstract and general one, and removing entirely from the mind the consideration of the individual, let me conjure your lordships to consider the consequences of such an exposition of the statute as that for which the defendant's counsel contend—let me entreat you not to elevate a signal of impunity to offenders—to make Ireland a receptacle of crimes. Do not make this country like one of the cities of refuge of the children of Israel—the haven and harbour to which iniquity shall fly for protection—and the favourite residence of malice and revenge. Do not make this court the altar and the sanctuary to which criminals may cling, as of old they were impiously suffered to do to the altar of Heaven! Do not convert this island of saints into an island of sinners; nor suffer it to be said, that it contains no venom but that of man! Remember the sacred dictate, Thou shalt keep thy tongue from evil speaking and slandering;—and do not, like the careless editor of the Bible, invert the sacred commandment and proclaim, Thou shalt scandalize thy neighbour—thou shalt do it with impunity—and thou shalt be sheltered under the canopy of the law.

[Here the arguments of counsel closed on both sides.]

*Court of Exchequer, Dublin, Thursday, February 7th, 1805.*

#### JUDGMENT OF THE COURT.

Mr. Baron Maclelland.—As there exists in the court a difference of opinion upon this question, it falls to my lot to begin, and in the first instance to state my reasons for the judgment I shall give.

In this case a writ of Habeas Corpus has been issued out of this court, to which a return has been made; and two affidavits have been sworn on the part of the prisoner: upon these documents taken together, he has by

his counsel moved to be discharged from custody.

[Here his lordship stated the writ, the return, and the affidavits at considerable length.]

On these documents which I have stated, the motion for the discharge of Mr. Justice Johnson is founded, and on his behalf it has been contended, that upon the facts thus disclosed this arrest is illegal, as his case does not fall within the scope of the act of 44th Geo. 3, c. 92. The question therefore to be decided by the Court, viz. the legality or illegality of the arrest and imprisonment, must depend upon the construction of that act of parliament.

On behalf of the prisoner, it has been contended, that on the true construction of this act, it cannot justify the present arrest, on two grounds,—first, that the act does not extend the power of arrest to cases of misdemeanors,—secondly, that even supposing it to extend to misdemeanors, yet it only authorizes an arrest in cases where the person accused has been corporally within the jurisdiction of the court where the trial is to be had, and has from thence escaped; but not to a case like the present, where the prisoner never was within the jurisdiction, except constructively.

The first point, namely, that the act does not extend the power of arrest to the case of misdemeanors, has been supported by a construction given to the particular words, in the third section of this act, and by arguments pointing out the hardships and inconvenience which would arise from extending its provisions to misdemeanors: for this purpose, that part of the preamble to that section is relied upon, in which it is stated, that felons and other malefactors “may make their escape;” these words are, it is contended, to apply to felons only; and it is insisted, that in the enacting clause, the word of reference *such* ought to be introduced, and made to refer to the words felons and malefactors, as synonymous terms, and thereby to confine the operation of the enacting clause to cases of felony.

To this argument there are two decisive objections,—first, that the preamble does not warrant such a construction; and, secondly, that if it did, the preamble could not control the enacting clause, which, as to this point, is clear and explicit.

It has been said, that the word malefactors is used in this statute as synonymous with “felons,” but, in my opinion, the legislature, by the word malefactors, intended to include all persons guilty of offences less than felony, and by the word felons, intended to include persons guilty of felony and the highest offences. And, in this opinion I am confirmed by recurring to the legal meaning of the word malefactor in the old statutes—it is there synonymous with trespassers; and it is



a settled rule of construction, that when the sense and meaning of words and statutes have been ascertained, they are to be understood in the same sense, when used in a subsequent statute.

The statute *de malefactoribus in parvis*, 21st Edward 1st, and the construction it has received, show that malefactors and trespassers are synonymous; therefore, in my opinion, the preamble does extend to misdemeanors, and is not confined to cases of felony, as has been contended for the prisoner.

But if there were any doubt of the meaning of the preamble, or if it even mentioned only "felons," still the words of the enacting clause are so clear as to render it impossible to entertain a doubt upon them. The words are, "If any person against whom a warrant shall be issued *for any crime or offence* against the laws of Ireland, &c." Try the meaning of these words by this test, which I shall mention:—Suppose it were thought necessary to make a new act to include misdemeanors, what other words could be used to express that intention more strongly than the words "any crime or offence," thus including every possible description of a violation of the law? These words are in fact as comprehensive as if every offence in the criminal code had been enumerated.

Looking therefore to the words of the third and fourth sections of this act, and applying to them the ordinary rules of construction, I am clearly of opinion, that by these sections, the power of arrest is extended to the case of misdemeanors. And this will appear still more clearly, if we consider how the law stood before the passing of the act, what was the mischief to be guarded against, and what the remedy provided. At common law, no person could be legally transmitted from England to Ireland, or *vice versa*, for trial, unless charged with a capital offence. In such a case, the offender might legally be transmitted. This appears from the sixteenth section of the English Habeas Corpus act, which declares, that such persons might be transmitted, as might have been prior to the act. The legislature thereby declaring, that such transmitting of capital offenders was legal prior to that act, and was not to be affected thereby.

Such construction of the Habeas Corpus act is recognised by all the judges of England in colonel Lundy's case, reported in 2nd Ventris, 314; and in the case of the King v. Kimberly, 2nd Strange, 848. So, at common law, a magistrate could not transmit a person from one county to another for an offence committed out of his jurisdiction, though upon examinations made before him, he might arrest such a person.

From this view of the subject it appears, that at common law, considerable difficulties existed as to the arresting and transmitting offenders for trial from county to county, and from kingdom to kingdom. In the first, the

arrest was attended with inconvenience to the prosecutor, and the mode of transmitting was tedious, circuitous, and expensive; in the latter, the power of arrest and transmitting was confined to capital cases; and there was no power of arresting or transmitting an offender charged with a misdemeanor from one kingdom to another. These defects in the criminal code called for legislative interference, and accordingly these defects were remedied between county and county, in England, by the 23rd and 24th of Geo. 2nd, in which it is admitted that misdemeanors are included. The legislature then went on to remedy, as between England and Scotland, that defect which had before existed between county and county. In England, good policy required, that the two countries united into one kingdom should bear the same relation to each other as the counties of the same kingdom did, and this was effected by the 13th Geo. 3rd, which gave, as between the two kingdoms the like remedy as had been before given to two different counties. According then to the rule of law, which obliges us to expound similarly all statutes made *in pari materia*, these statutes should be construed all together; and as the 23rd and 24th Geo. 2nd unequivocally extend to misdemeanors, so must the 13th Geo. 3rd be held to extend to similar offences; and in this opinion I am strengthened by the direction of the 13th Geo. 3rd, that when a person is brought from Scotland into England, he shall be taken before a justice in the first English county, there to be dealt with according to the 23rd and 24th Geo. 2nd, that is to say, he shall be bailed if his offence be bailable, and if not bailable, he shall be transmitted to the prison of his proper county; thus clearly including offences under felony, for which only bail may be taken. And from this, it is clear, that the object of the 13th Geo. 3rd was, as I have stated, to extend as between kingdom and kingdom the advantages of the 23rd and 24th Geo. 2nd. The act now under consideration, the 44th Geo. 3rd, ch. 92, incorporated all these acts—the 23rd and 24th Geo. 2nd, by its first and second sections—the 13th Geo. 3rd, by its 3rd and 4th—and from the principle which I have laid down, must embrace the same classes of offenders with the acts from which it is clearly copied.

But in order to get rid of this irresistible deduction, it is said, that though the remedy is given between county and county in Ireland with respect to misdemeanors, no such remedy is given between kingdom and kingdom; and upon this extraordinary principle, that such offences are below the notice of her legislature. Shall it then be urged, that the felon who commits the pettiest offence of larceny, is an object for the interference of the legislature, and that the foulest perjury, the most mischievous swindling, or the most seditious libel, shall be below its notice, be-



cause those crimes, even though the latter should approach the boundary of treason, are only punishable as misdemeanors? Can it be supposed of the legislature, that it could design to give impunity to such offenders? But so far from this argument being in favour of the prisoner, I think it powerfully against him; for if it be admitted (as it must) that the interference of the legislature was necessary for the arrest of persons guilty of misdemeanors flying from one county to another, it follows, that such interference, as between kingdom and kingdom, was necessary *a multo fortiori*—for there was at common law a remedy, though defective, between county and county, inasmuch as a magistrate might arrest, though he could not transmit or remove but by Habeas Corpus, while between kingdom and kingdom there existed no remedy whatever.

By the 13th Geo. 3rd, the legislature placed England and Scotland on the same footing as to the arrest of all offenders as two English counties were by the 24th Geo. 2nd, excepting as to the right of giving bail; and so, in my opinion, does the 44th Geo. 3rd place the three districts of the United Kingdom on the same footing on which Scotland and England stood under the 13th Geo. 3rd. It has been greatly relied upon at the bar, that the want of a provision to bail in this act is a proof, that it was not intended to extend to cases where the subject is entitled to bail at common law. It is true, that no such provision is made by the act; and if I could admit, that the enacting clause was doubtful or obscure, and that the omission of such a provision caused the intolerable hardships which have been stated at the bar, perhaps I might yield to the construction desired; but when the language of the act is as clear as language can be, when the words are for "any crime or offence against the laws of England or Ireland respectively," I am bound to consider misdemeanors to be included, even though such hardships should follow; for I am bound as a judge, to construe the law as it is, and not as I might think it ought to be.

Let us consider what was the relative situation of England and Scotland, as to criminal jurisprudence, when the act of 13th Geo. 3rd was passed—the criminal code in each varying in almost every essential particular, so much so, that even the professors of the law in one country could not pronounce an opinion on the criminal law of the other. Could then a prudent legislature conceive, that an English justice of the peace could be endowed with such knowledge of the law of Scotland, as to decide whether a man was to be bailed or not, when if he asked the chief justice of England for advice, he would probably answer, he could not give an opinion on the point? or would the English legislature trust the power of bailing to a Scottish magistrate, instructed only in a criminal code, arbitrary and severe, compared to the English

code? Might not the legislature fairly presume, that a Scottish magistrate might refuse to bail in a case where bail might be taken, and thus might have sent a man a prisoner from Scotland to Cornwall; whereas, if the power of bailing were reserved for the English magistrate (as it is by the act) he would be bailed in the first English county he would reach—Cumberland or Northumberland? Thus, by deferring the time of giving bail, until the arrival of the prisoner in the county, against whose laws he had offended, and before magistrates acquainted with those laws, all these ill consequences are avoided.

If this view of the subject be considered, I think it will appear, that the legislature could not have readily given the power of bail by the 13th Geo. 3rd, otherwise than they have done; and on thirty years experience no change has been thought necessary. When the legislature came, in the 44th Geo. 3rd, to extend this act to Ireland, and to make its benefits co-extensive with the three districts of the empire, the same reason still applied as to Scotland; and therefore, as between Ireland and Scotland the same impossibility of rationally giving the power of bail continued. The same reason as between England and Ireland does not prevail; but as thirty years experience had not furnished an objection to the practice under the 13th Geo. 3rd, it is not unreasonable to suppose the legislature thought the same rule a wise and a safe one as to England and Ireland, and that no great indulgence was due to an offender who had either fled from justice, or who had committed a crime by secret agency within a jurisdiction, and yet kept himself aloof from its ordinary process. But it has been urged, that while the legislature supposed such an ignorance of the laws of the different countries in the magistrates of each, it is hard to believe that it would subject to the laws of the other country a person resident in his own, and consequently ignorant of the laws of that jurisdiction against which he should offend: to which I answer, where a man offends by his corporal presence, there can be no doubt that he is bound to obey the laws which protect him; and when he offends by agency, from the moment that his misconduct passes the threshold of the other country, the well-known principle of the law, *ignorantia legis non excusat*, attaches upon him.

But the climax of this objection is, that by this construction, the 44th Geo. 3rd repeals the Habeas Corpus act. When I first heard this observation I own I was startled, as I felt that it was not an ordinary question, but one of vital importance to the law and constitution. However, in my mind, the most satisfactory answer can be given to it:—In the first place, even if it did virtually repeal that act, I should feel myself bound by the clear, explicit, and unequivocal wording of this act, to persevere in my construction. But I am happy that I am not called upon to perform



so painful a task as to decide, that the Habeas Corpus act is repealed or materially affected by this act.

The two great evils which the Habeas Corpus act sought to remedy were, first, the delay of returns to writs of Habeas Corpus, whereby the king's subjects were unjustly detained in prison for illegal causes—and, secondly, where persons were illegally arrested and sent into prisons beyond the seas. It cannot be pretended, that this case falls within the first class of cases remedied by the Habeas Corpus act: here there is no delay of return of this writ; and the party has had the opportunity of instantly and amply discussing the legality of his arrest.—But we cannot bail him:—true, but the moment when he shall arrive in England he will be entitled to give bail for any misdemeanor charged against him by the laws of England, and there he will have the benefit of the English Habeas Corpus act. But is he in a worse situation thereby than a person arrested under the 23rd Geo. 2nd, would have been, that act having made no provision for bailing between county and county?—yet that act never was held to be a repeal of the Habeas Corpus act.

Under the 23rd Geo. 2nd, or prior thereto, a magistrate could not bail a person arrested in his county for a misdemeanor committed in another county. Under the 23rd Geo. 2nd, the person arrested for the misdemeanor, was transmitted by the magistrate to the proper county, and prior to that statute he was transmitted by Habeas Corpus. Was there any alarm or outcry against this kind of imprisonment from the year 1679, when the English Habeas Corpus act was passed, until the year 1750, when the 24th Geo. 2nd was enacted? or did it enter into the head of any man during that period to contend, that the Habeas Corpus act was infringed, by the arrest of a man for a misdemeanor, by a magistrate who could not bail, and transmittal of him to a county where he could be bailed? And yet what is this case but transmitting from district to district, instead of from county to county? and if any delay should occur in such progress, the party arrested could be relieved by writ of Habeas Corpus, as appears by the case I have already quoted from Strange's Reports. And I think it equally clearly appears, that this case does not fall within the second class of grievances remedied by the Habeas Corpus act. The preamble of the 12th section of the English Habeas Corpus act states as the evil to be thereby guarded against, "the illegal imprisonments of persons in prisons beyond the seas." Now can it be seriously contended, that sending a person for the purpose of trial, to a place where, under this very act, he must be bailed, is a repeal of the Habeas Corpus act?

On the whole, therefore, I am clearly of opinion that this act, the 44th Geo. 3rd, in the 3rd and 4th sections, extends the power of arrest to cases of misdemeanors. And this

opinion I form, not merely from the clear and explicit words of the sections, but also from the spirit, intent, and object of the act. And in this part of the case I understand I am fortified by the unanimous opinion of the court of King's-bench.

I now come to the second objection made to the legality of this arrest, viz. "That the 44th Geo. 3rd (supposing it to extend to misdemeanors) is confined to breaches of the peace by actual presence, and where the person by quitting the jurisdiction evades punishment;" and this construction is contended for, as well in the case between county and county as between kingdoms, or to speak more correctly, between district and district. It therefore becomes necessary to take a review of the acts relating to counties, as well as those relating to distinct kingdoms:—the first act is the 23rd Geo. 2nd, cap. 26, sect. 11.

[Here his lordship read this section of the said act.]

I am willing to admit, that this act confined the power of arrest to cases where the offender had changed his situation from one county to another, which is expressed by the words "escape and go into;" the one meaning a flight to avoid arrest---the other a change of place without any such intention; and this shows, that even in this act the enacting clause extended beyond the preamble, which is confined to the case of *escape* only.

The first view of this act shows it was inadequate to remedy the defects existing. What were these defects in the criminal code as to this point? By the limited jurisdiction of justices of the peace, their powers were confined to the limits of their counties: the criminal, if beyond such limits, was not within their reach. If the magistrate of the county where the criminal might happen to be was called on to act, with respect to an offence committed in another county, it must have been on informations sworn before him, which was grievous to the prosecutor, as it required him to travel to, perhaps, a distant county; and when by such examinations the magistrate was empowered to act, he could arrest the person; but in misdemeanors he could not bail.

How were these obstacles to public justice to be removed? By giving the magistrate the same power and authority in *all* cases over an offender found in his county, as if the crime had been committed in that county. I say in *all* cases, as well where the criminal had never changed his situation as where he had; for no man can seriously conceive, that the object of the legislature was (as has been contended) to punish the crime of flight---no; the object was to punish the offender for the original crime charged against him.—Besides, it is admitted, that a man who left a county, ignorant of any charge against him, may be legally arrested in any other county. Now, I would ask, is it not equally within the object



of these acts to have the power of bringing to justice a man who has never changed his residence, and who may yet have been, by secret agency, guilty of the foulest crimes in a distant county, as to have the power of arresting a man in a distant county, who may have gone there on his lawful occasions, totally ignorant of any charge existing against him in the county which he has left? And, therefore, if the words of the 24th Geo. 2nd, and the two subsequent acts, viz. the 13th and 44th Geo. 3rd, will bear such a construction, I am bound to give them such construction; as by so doing, the attainment of justice is effected, and the defects of our criminal code removed which prevented the trial of offenders and granted impunity to criminals.

Let us now see how far the 24th Geo. 2nd, cap. 55, effected this purpose.

[Here his lordship stated the said act at large.]

Now, in my opinion, the enacting clause is clear and explicit, and sufficient to remedy all these defects which I have pointed out.—In the first place, the words, “any person or persons against whom a warrant shall issue,” are general, and not confined by any word of reference to the preamble. Then the words, *escape*, *go into*, *reside*, or *be*, should each receive, if they will admit of it, a definite and distinct meaning, so that none of them shall appear to be useless or superfluous. The word *escape* I construe to apply to cases where the offender flies from the county where he is accused, with a knowledge of such charge, and to evade trial. The words *go into* I construe to apply to the case of a man who leaves the county where he has been charged, ignorant of that charge, and goes into the other county on his lawful occasions. The word *reside* I construe to apply to the case where a man has neither escaped, nor gone into the county where he is arrested; but where he has permanently resided in that county, and yet has, by agency and procurement, committed a crime in another county. The word *be* I construe to apply to cases where the offender, without having either escaped, or gone into the county where he is arrested from the county where the crime was committed, and without residing permanently in the county where he is arrested, yet happens to *be* found in such county, having by procurement committed a crime in another county, where he was actually present:—as if, in this case, Mr. Justice Johnson had been arrested while on a visit to the county of Wicklow, or while passing through it; in that case, he had neither *escaped* from Middlesex, where the crime was committed; nor had he *gone into* Wicklow from Middlesex; nor did he *reside* in Wicklow; but he was found there, and therefore might properly be said to *be* there.

Now what is the construction given to these words, *escape*, *go into*, *reside*, or *be*, by the counsel for the prisoner? They contend,

that these words can only apply to cases where the offender has actually left or fled from the county where the crime has been committed, and has gone into the county where he is arrested. And, to support this construction, they say the clause should be read thus:—If any person shall escape, or go into, or having escaped, or gone into another county, shall reside, or be there.—Now, it is manifest, that by this construction the words *reside* and *be* are utterly nugatory and superfluous; for, if the clauses are only to apply to the case of offenders who left the county where the offence is charged, and who have gone into the county where arrested, then the words *escape* and *go into* were sufficient to attain that object, and the parliament might have been content with these two words only, as it was when it passed the 23rd Geo. 2nd, in which the words *reside* and *be* do not occur. And the counsel for the prisoner, feeling that this construction obviously rendered the words *reside* and *be* utterly nugatory, endeavoured to give them some meaning; and what was their explanation of them? This extraordinary one: that the words *reside* and *be* were introduced to mark the extent of the magistrate's jurisdiction, and that he was not to execute the warrant so indorsed beyond his county.

But that such cannot have been the reason for introducing the words *reside* and *be*, is manifest from this, that the subsequent part of the section expressly directs the magistrate to execute the warrant only in the county where it is indorsed.—Thus it is manifest, that by the construction contended for by the prisoner, those important words *reside* and *be* are made nugatory and superfluous, and are literally expunged from the statute; whereas, by the construction I have given to these words, each word is made to express not only a distinct meaning, but is made descriptive of a distinct class of cases. And, by this construction, not only is verbal criticism satisfied, but what is much more important, the great object of the legislature, the great object of public policy, is attained, viz. the removal and annihilation of the ancient obstacles, which prevented the trial of offenders in many cases, and gave impunity to crime. Such a construction is, therefore, not only legal, but, in fact, coercive on a judge.

But it has been contended, that, by the preamble to the 24th Geo. 2nd, the enacting clause is to be confined to *escape* either *before* or *after* warrant granted. But, I deny that the preamble can in that act control in such way the enacting clause. No preamble can do so except in two cases—first, where by words of reference the preamble is made part of the enacting clause; secondly, where the enacting clause is obscurely framed, and then the preamble is resorted to as a mode of discovering the meaning of the legislature. Now, this statute does not fall within either of these cases; for in this enacting clause



there are no words of reference to the preamble; nor is the enacting clause obscurely framed; nor does it require any assistance from the preamble to ascertain its meaning.

From the manner in which this argument has been used by the prisoner's counsel, it would follow, that nothing shall be deemed to be enacted by the statute beyond the limits of the preamble. If this were the rule, what would become of the right to bail given to the magistrate by this act? It is not mentioned in the preamble, and yet it is obvious that it must have been one great object of the legislature in passing this act. That the rule is as I have laid it down will appear from the case of the *King v. Robinson*, 2 East, P. C. 1113.

In that case, Mr. Justice Buller, in delivering the opinion of the twelve judges of England, uses these words:—"Where the enacting clause of a statute refers to such offences only as are contained in the preamble, it may be restrained by the preamble; but in this case it would be doing violence to very plain words, and repealing some of the obvious provisions if it were so restrained. It is no uncommon thing for the preamble of a statute to recite a particular mischief as the cause of making it, and yet for the enacting part of it to embrace more general objects, and to extend to other cases which the legislature thought within the mischief." So, in this case I would say in the words of judge Buller, the enacting clause does not refer to and connect itself with the preamble, and that to restrain the enacting clause in this case to what is specified in the preamble, would be doing violence to very plain words, and repealing some of the obvious provisions of the act.

There is a still more modern case, which, perhaps, even more accurately applies to this part of the case. It is the case of the *King v. Marks and others*, 3rd East's Reports, 157. That case came before the Court of King's-bench in England, on a motion to bail the prisoners on returns to writs of Habeas Corpus. The prisoners appeared to be charged with a felony under the 37th Geo. 3rd, cap. 123. By the preamble of that statute it was recited, that, "Whereas divers wicked and evil disposed persons have of late attempted to seduce persons serving in his majesty's forces by sea and land, and others of his majesty's subjects, from their duty and allegiance to his majesty, and to incite them to acts of mutiny and sedition, and have endeavoured to give effect to their wicked and traitorous proceedings, by imposing on the persons whom they have attempted to seduce the pretended obligation of oaths unlawfully administered."—The statute then enacted, among other things, that "to administer any oath or engagement not to reveal or discover any unlawful combination or confederacy, should be a capital felony." It appeared by the examination returned with the writ, that the prisoners were charged that they, being journey-

men shearmen to master clothiers, formed an association to raise their wages, and, in pursuance of such conspiracy, administered an oath to one of their trade, "to be true to the association, and not to divulge its secrets." It was contended in that case, and with much more plausibility than here, that as the preamble only related to oaths administered for the purpose of creating mutiny or disaffection in his majesty's troops, the enacting clause could not be extended to a case so dissimilar as that before the Court. But the Court held, that as there were no words of reference in the enacting clause to connect it with the preamble, and as the words of the enacting clause were general, that they included the case before the Court, and made it a felony. In that act the preamble professed to deal only with oaths tending to promote mutiny or disaffection in his majesty's forces, yet the general words in the enacting clause extended the penalty of even death to all illegal oaths. Shall it then be said, that when the life of a man is at stake, the preamble shall be rejected, but that it shall be made to operate when it is calculated to clog the wheels of justice, to prevent the trial of an offender, and to give even security to crimes?

Having thus shown what I conceive to be the true construction of the 24th Geo. 2nd, let us come to the next statute in point of date, the 13th Geo. 3rd. I have already observed, that in my opinion the object of the legislature in passing this act, the 13th Geo. 3rd, was to place Scotland and England in the same situation as to the arrest of criminals as two English counties, except with respect to the power of bail. And accordingly, in the 13th Geo. 3rd, the legislature uses in the enacting clause the very same words that are used in the 24th Geo. 2nd, viz. "if any person against whom a warrant shall be issued shall escape, go into, reside, or be."—These words must, therefore, receive the same construction in the latter act as in the 24th Geo. 2nd, according to the rule of construction I have already laid down.

Having thus commented on all the preceding acts, I come now to the act in question, the 44th Geo. 3rd. This act had two great objects in view:—In the first place, to give Ireland the benefit of the provisions of the 24th Geo. 2nd, as between county and county; and, secondly, to give Ireland the benefit of the provisions of the 13th Geo. 3rd, as between it and England and Scotland. The first object is attained by the first and second sections of the act, and the second object by the third and fourth sections—[Here his lordship read the material parts of the first section of this act.]—The object of this first section was, to give Ireland the benefit of the 24th Geo. 2nd; the preamble then, in reciting the defects in the criminal code which were to be remedied by it, would naturally state the defects which were removed in England by the 21th Geo. 2nd; that is, the



preamble in the 44th Geo. 3rd would be as extensive as the enacting clause of the 24th Geo. 2nd, which I have already shown is more extensive than the preamble of the same act, *viz.* the 24th Geo. 2nd. Accordingly, we find, that the preamble in the first section of the 44th Geo. 3rd is entirely new, and differs essentially from that of the 24th Geo. 2nd. It farther recites, that, "Whereas it frequently happens that persons against whom warrants are granted by justices of peace in Ireland, escape into other counties; and it may also frequently happen that persons having committed offences in some county in Ireland, may reside or be in some other county."—By this preamble the legislature points out the two classes of cases which had been remedied by the 24th Geo. 2nd, and which were to be remedied as to Ireland by that act, *viz.* that class of cases where the offender had escaped from or left the county where the crime was committed; and secondly, that class of cases where the offender happened to *reside* or *be* in a different county from that in which the crime was committed, without having changed his residence, or escaped from such county. By this important change in the preamble of the first section of the 44th Geo. 3rd, from the preamble of the 24th Geo. 2nd, I conceive the legislature to have decided by a legislative construction the extent of the enacting clause of the 24th Geo. 2nd, and the distinct meaning of the words *escape and go into*, and *reside and be*; for the preamble of the 44th Geo. 3rd, states a case as an object of remedy by the act, in which nothing like escape ever existed or happened, and it remedies that defect by the same words, *reside and be*, in the enacting clause, as are used in the enacting clause of the 24th Geo. 2nd.

In the third and fourth sections of the 44th Geo. 3rd, and which peculiarly relate to this case, the same enacting words occur as in the first section, with one addition which still farther strengthens this construction, and the distinct meaning between the words *escape and go into*, and *reside and be*. I allude to the word *whither*, introduced into both the third and fourth sections, and which does not occur in the 13th Geo. 3rd.—By the third section (and so in the fourth) it is "enacted that it shall and may be lawful for any justice of the peace of the county, city, &c. &c. in England and Scotland respectively, *whither* or *where* such persons shall escape, go into, reside, or be, to endorse his name on such warrant."—By the introduction of this word *whither*, the legislature seems to have been astute to discriminate and mark the difference between the words *escape and go into*, *reside and be*—the word *whither* applying to the two former, as the cases where a change of place had been affected; the word *where* applying to the words *reside and be*, where no change of situation had taken place.

Upon the whole, therefore, whether I look  
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to this act alone, or to the four acts made *in pari materia*; whether I look to the words of this act, or the four, and construe them according to legal rules of construction, or whether I look to the great object, intent, and policy of the legislature; in all and each of those views of the subject, I am clearly of opinion, that the man who never was in the country where the crime charged against him was committed, is as liable to arrest under this act of the 44th Geo. 3rd, as the man who actually escapes from such country.

Two other topics yet remain, which have been urged by the prisoner's counsel, on which I will very briefly observe. It has been urged, that the mischief sought to be remedied by this act was the impunity of crimes; and that, as in this case, the prisoner ought to be tried in Ireland for publishing this libel, this case is not within the mischief sought to be remedied by the statute, and therefore ought not to be affected by its provisions. To this I answer, the crime of publication in Ireland is totally distinct from the crime of publishing in England—distinct in point of law, and essentially different in the consequences flowing from it. Suppose the prisoner were convicted of publishing this libel in Ireland, could he plead *autrefois convict* to an indictment in England for publishing the same libel? Certainly he could not. And nothing can more decisively show that the crimes are distinct.

What is it that essentially constitutes the crime of a libel against the government?—Its tending to alienate the affections of the subject from the crown, and to bring the government and its officers into contempt and disrespect. Can a trial in Ireland for publishing this libel, and a conviction here, compensate the justice of England for the violation of its laws by a publication there? Or can such conviction here compensate the injury the state has received in England, by the crimes and opprobrium cast there upon the Irish government?—The crimes are therefore not only distinct in point of law, but most essentially different in the evils and consequences resulting from them; and therefore such distinct crimes require and call for distinct punishments.

But, last of all, it has been urged by the prisoner's counsel, that the prisoner cannot be tried in England on the indictment, and should, therefore, be now discharged, in as much, say they, as he is not amenable to the laws of England, for an act done there by his influence and procurement, while he resided in Ireland. This position is too absurd to be combated: it would set at nought the principles and ties which bind the two countries together, and would hold out the greatest encouragement to crimes by the impunity it would afford. No authority has been quoted in support of it; and, I conceive, I should ill discharge the duties of my office, if I yielded to the confident assertion of such a principle,



—a principle, which, if acted on, would go little short of separating the two countries. I will only say this: that every subject of the empire is bound, by his allegiance to the crown, to obey the laws of the empire; he is bound not to infringe the laws of any part of it, either by actually committing an illegal act, or procuring it to be done in any part of the empire. If he does so, he acts at his peril, and he must answer for it.

I have now gone through all the topics and arguments offered by the prisoner's counsel; and I have the consolation to reflect, that the opinion I have formed in this case, is supported by the decision of the court of King's-bench. And here I cannot help observing, that this decision of the court of King's-bench has been treated with too little attention by some of the counsel for the prisoner. One of the prisoner's counsel has told us, that the construction given to this act by the crown (and which is now sanctioned by the decision of the King's-bench), was so ridiculous that he would be content to be driven as a proscribed driveller from these courts, if he did not manifest its absurdity to the meanest capacity. It is unnecessary for me to say, that, in my opinion, he has totally failed in his undertaking. But, after such an observation, I think myself bound to state, that, if I had entertained doubts on this subject, I should have considered myself bound by the decision of that Court—a decision made after mature deliberation, and by judges of as great legal knowledge, and splendid talents, as any this country can boast of.

On the whole, I am of opinion, that Mr. Justice Johnson must be remanded; and, I feel happy, that, in pronouncing this opinion, I enforce no hardship upon him. I only thereby afford him that opportunity, which, were I placed in his situation, I should most anxiously desire—an opportunity of promptly meeting the charge, and proving my innocence.

*Mr. Baron Smith.*—In this case, the arrest appearing to me to have been illegal, I am consequently of opinion that the prisoner should be discharged.

Indeed, I conceive that such should be our rule, in a matter of less easy solution than the present; for it is only in cases of certainty, that the Court is to remand: in those of doubt, it is bound to bail, or to discharge: and here, accordingly, we ought to liberate, in as much as we cannot bail.

In entertaining the sentiments which I have thus briefly avowed, I am aware that I encounter the authority of my Lord Chief Justice;\* whose fallibility I am the more reluctant to admit, because he would himself be the first to make, and nobly act on, the admission. But, fallible he is; for he is human: and it is superfluous to state, that in

dissenting from the opinion, I venerate the man. He indeed is one, my deference for whose superior intellect and knowledge gives way only to my respect for his more valuable qualities; and to the honest exultation which I feel, that merit so uncommon is placed at the head of our crown law. I must differ with some degree of qualm from him, who more elevated by worth and talent, than by age or station, would lend a patient and docile ear to the arguments of the humblest man. Who, if these should bring conviction to his candid and modest mind, would unaffectedly rejoice to have his errors thus corrected; without adverting to the lowliness of the instrument which removed them; and whom this liberal sentiment alone would have sufficed to exalt, above the corrector to whom he yielded. A man, who may be proud; but is a stranger to that base pride, whose pert and disgusting offspring are obstinacy and presumption.

I am aware that I also differ in opinion from one with whom I have generally had the good fortune to agree; and from whom no man, who is as well acquainted with him as I am, can dissent, without considerable scruple and hesitation—I mean my highly esteemed and respected friend, judge Daly.

But let it be recollected, that the peculiar situation of judge Osborne precluded him from giving, and perhaps prevented him from forming, any judgment on the present question. It is possible that, had he not yielded to the circumstances of a situation, which he considered so delicate as to enjoin silence as a duty, he might have delivered an opinion, in concurrence with that of the second judge of the court, and in opposition to what a person, unacquainted with the manly integrity of his character, might suppose to be the more probable bias of his mind. In that event, the Court being equally divided, the prisoner would have been remanded, not so much by a substantial decision on his claim, as by virtue of an etiquette and form of law.

There is then a possible case, in which the court of King's-bench may be considered as having been equally divided. But, whether such an hypothesis be admitted or not, be it remembered, that my sentiments coincide with those of Mr. Justice Day; as independent a gentleman, and as intelligent and upright a magistrate, as, I believe, is to be found upon the bench of either country; and one eminently versed and informed in criminal law; a judge, to whose hands an innocent man might commit his life; and whose late decision seems calculated to prove, that the liberties of the subject may be entrusted to his care.

Nor am I unapprized that, in my own court, I am likely to be left alone: another argument (it must be confessed) to show that I am wrong. But here, too, I have to do with men, whose talents will forbid them to be arrogant or uncandid: for of talent, I find modesty the almost inseparable companion.

\* Downes.



Thus have I every advantage, which the impartiality of the judicial station permits me to desire.

If I could but avail myself of these—If the truth and justice of my opinions could supply the deficiency of my powers, I should not despair of making an impression on my lord and brethren, in behalf (as I conceive) of our liberties and constitution.

The prisoner's detention must be justified, if it admit of justification, by the provisions of the act of the 44th of the present king, ch. 92; so that the question is upon the construction of that statute.

Where the enacting clauses are perfectly free from ambiguity or doubt, it is neither necessary, nor perhaps allowable, to resort to the title, preamble, or other parts of the statute, for the purpose of controlling the efficacy of such plain enactments.

Yet where the enacting passages are *not* completely clear; but on the contrary leave room for doubt, as to what should be their construction, the rule is otherwise. For though we may not travel out of the enactments, for the purpose of rendering clear expressions doubtful; we may look beyond them, in order to make dark expressions clear. In the latter case, law, as well as reason, permits us to derive assistance from other parts of the same act; and even expatiating farther for explanation, to illustrate the question by the purview of other statutes *in pari materia*;—by the essential spirit of our law, and fundamental principles of our constitution.

And here, by the way, let me protest against any argument, drawn from our supposed knowledge that the present act was framed for the case of the present prisoner. My respect for parliament will not allow me to admit such an hypothesis for a single moment: and though I were irreverently to admit a supposition, which, on the contrary, I reject;—and though I were to know, what on the contrary, I cannot believe;—that what professed to be a general and public law, was in fact a private and particular act of quasi attainder, I still should expound it by the ordinary rules of construction; though I were thereby to leave the meshes of the net too wide, for entangling the prey which it was intended to secure.

But, turning at once from a supposition, in the present case so unjustifiable, and in any case so inadmissible and culpably disrespectful, I will, agreeably to the doctrines which I have been laying down, admit the preliminary question here to be, whether the enacting words in the fourth section of the statute now before us, convey a meaning so unequivocal and precise, as to preclude the necessity or right of resorting elsewhere, for aid towards a sound and correct interpretation.

The prisoner here stands charged with a *misdemeanor*: and so far from having *escaped* from Great Britain into Ireland, since the alleged commission of the offence, the passing

of the act, the issuing of the warrant, or day mentioned in the preamble,\* it appears by an affidavit, which does not contradict the record before us, that from a period antecedent to the earliest of these dates, he has uninterruptedly continued a resident of Ireland. Therefore it may for argument be assumed, that from the hour of his birth to the present time, he never has quitted this country for a moment.

Do the words then of the fourth section of this statute precisely apply to, and unequivocally include, such a case as I have stated? and warrant the prisoner's apprehension and detention? If they do, he must be remanded; and conducted, with all the insignia of felony, to England. We have no right to discuss the policy of an unambiguous statute; our business being not to legislate, but to construe. What the legislature has done clearly, we are to intend that it has done rightly; nor can we consider a proceeding, which parliament has sanctioned, as inconsistent with the principles of a free government; or as an invasion of the constitution.

But I am far from considering the enacting words of the clause in question, as applying clearly to the prisoner's case.

The words are, that "from and after the first day of August, 1804, if any person, against whom a warrant shall be issued by a magistrate of Great Britain, for any crime or offence, against the laws of England or Scotland, shall *escape, go into, reside, or be* in Ireland, it shall be lawful to"—proceed as has been done in the case before us.

It is plain, that Mr. Justice Johnson does not come within the description of persons who have escaped, or gone into Ireland. The affidavit, already adverted to, excludes him from that class; and, if the enacting words had ended here, would manifestly exempt him from the operation of this statute.

But the enactments do not stop here. They extend to certain cases of persons who *shall reside or be* in Ireland. Therefore, if these words indisputably embrace judge Johnson's case, there is no more to be said. We may close the statute, without examining the remaining clauses; and with becoming reliance on the wisdom, and deference to the behests of parliament,—must remand the prisoner, without trembling for the constitution.

But these supplemental words, so far from relating unequivocally to the case before us, according to my construction of them, do not apply to it at all.

At least, it cannot be alleged, that they admit of but *one* reasonable exposition; or, consequently, that they are wholly unambiguous:—and if their ambiguity be once conceded, such admission will let in, for the purpose of explanation, the remaining passages, and general context of the statute; the policy of the law, according to one or other of the pro-

\* The 1st of August, 1804.



posed constructions; together with the aid of those various topics which I have already noticed.

It cannot, I say, be contended, that the words "shall reside or be" can *only* mean shall from his birth *have* constantly resided, or from the hour of his nativity shall uninterruptedly *have* been. It must, on the contrary, be allowed, that such words *may* denote a residence, which, though not of future commencement (with reference to the issue of the warrant), yet originated in that previous removal or escape, which, as well from the title and general scope of the act, as from the immediately preceding and contiguous words in this very sentence, appears to have been the cardinal fact, in contemplation of the legislature.

Indeed the first of these interpretations I am so far from holding to be the *only* rational one, which the expressions can receive,—that so to interpret them, would, as it seems to me, be (at some expense of grammatical correctness) to violate the liberty of a subject,—to contravene the spirit of the Habeas Corpus act,—and to sap some of the best principles of our truly valuable constitution.

I therefore should, with little hesitation, construe these words, if they alone were placed before me, as if the sentence ran, "shall escape, go into, or" (having done so) shall "reside or be."—In other words, I should hold the legislature to have described a tarrying or residence, following upon, and having commenced with a removal.

But it is enough for me if, without too great subtlety of refinement, the words will admit of more than one interpretation. For then we may inspect the whole of this\* and other statutes; revolving, at the same time, the maxims of our law, and constitution,—in order to decide which of these possible expositions is the right one. Thus it is, that the policy of the law comes under our consideration: a due respect for parliament inducing us to conclude, that a construction, which renders their act impolitic, must be a false one.

Having entitled myself to this latitude, I should yet begin the investigation by resorting *not* to any other section of the statute, nor even to the recitals or introductory parts of this;—but, confining myself to the context of the *enacting passages themselves*, I would observe, that if the exposition from which I dissent be adopted, the words "*escape*," "*go into*," and "*reside*," will be impliedly rejected as superfluous and useless; inasmuch as in this view, the single sweeping expression, the *descriptio generalissima*, "*shall be*"—would comprehend every case, to which the other words could by possibility extend. Invert the order; and the superfluity becomes more apparent—"If any person shall be in, reside in, escape

or go into." This would be as if a statute were to say---if any quadruped, or horse, or dog, or cat, &c.

On the contrary, the construction for which I contend, besides being perhaps more consonant to the rules of grammar, and certainly far more favourable to the subject's liberty, is also more conformable to an established rule of interpretation: because, instead of expunging any words which the legislature has introduced, it gives (by the removal of tautology) some degree of meaning and efficacy to them all.

For, first, a person may, after warrant, *escape* into Ireland:

Or, secondly, without *escaping* (according to the technical meaning, or even ordinary acceptation of that word), he yet, after a warrant shall have been issued, may go thither, on (perhaps) his ordinary occupations:

Or, thirdly, having, *before* the issue of the warrant, absconded, or without absconding, arrived there,—he may, at the time of its issuing, be resident in Ireland:

Or, fourthly, he may *be* there, not as a fixed resident, but merely as a transient and temporary sojourner.

For these several cases, the legislature, according to my construction of their statute, will, without plainly tautologous repetitions, have provided; and prevented any quibbling evasions of the law, by a person who might otherwise be beyond the letter, whilst his case was within the spirit of it.

Again, the authority, which this section of the statute gives, is restricted to offences committed against the laws of England, or of Scotland (recognizing, by the way, their distinctness from those of Ireland.)

Now, though there may be cases, where a person, himself in one place, can yet commit a crime within another, still these are but rare exceptions to the general truth of the position, that whosoever is guilty of a crime, must himself, at the time of its perpetration, be in the place where it is committed.

This general truth is much more likely, than exceptions of rare occurrence, to have been within the contemplation of the legislature;—who may be therefore intended to have directed the provisions of their act to the purpose of making persons amenable, who having *been* in England or Scotland, and there broken the law, should afterwards quit the scene of their transgressions; and get beyond the sphere of the jurisdictions which they had defied.

Thus, *first*, whether after warrant issued, they should *abscond*, or only *migrate*: or *secondly*, previously to its issuing, had *already* escaped, or gone into Ireland; or, *thirdly*, whether they were temporary sojourners, or permanent residents, in that country,—all these would be immaterial and nugatory inquiries. In each case, the *Act* of the law, no longer halting, would overtake them: would annul the pernicious effects of their migra-

\* "Agreeably to the maxim of sir Edward Coke, that a statute should be expounded, *totâ lege inspectâ*." Orig. Ed.



tion; and make them responsible for the offences which they had committed.

But, still, an indispensable requisite in each case,—a preliminary *sine qua non* would be, that they *had been* in England or Scotland, (as the case might be), and having there transgressed the local law, had afterwards withdrawn themselves from British jurisdiction.

The words, “*against whom a warrant shall be issued*” (in this section) may not have been enough considered, or made use of, to assist us in construing the words “*reside or be*.”

If it had merely been enacted, that “if any person, against whom a warrant should be issued, for a crime of which he had been guilty in Great Britain, should escape or go into Ireland,” such words might only include the case of a migration subsequent to the issue of such warrant—and criminals withdrawing themselves in the interval between the commission of the offence, and the issue of the warrant, might thus evade the law. Therefore, the words “*reside or be*” are properly subjoined. These latter words include a greater portion of time; and extend the provisions of the act to the case of a migration, subsequent indeed to the crime, but previous to the warrant.

And this construction is supported by the following facts, viz. that the statute, which we are now expounding, is taken from an act passed for the case of England and Scotland, in the 13th of the king; and which is itself derived from, and in some degree compounded of, two English acts for county and county, passed in the 23rd and 24th years of George 2nd. The first of these latter acts uses the words “*escape or go into*,” merely: whereas the second, without altering the scope or meaning of the former, added the more comprehensive words *reside or be*. Plainly, because the letter of the earlier statute had failed to reach a case within its spirit; viz. a removal from one county to another, before the issuing of the warrant, though after the commission of the crime. A collation of the preambles of the 23rd and 24th Geo. 2nd, puts this matter beyond doubt; and proves that the words “*reside, or be*,” were inserted in the latter act, *merely* on this account: and the general preamble of the 44th of the king, (which is, properly speaking, dispersed and scattered through the first, third, and fourth sections), is, substantially, a mere compilation from those two preambles: and therefore shows, that the words “*reside or be*” have been introduced, *eadem intuitu*, into this recent statute. I say, first, that the statute now before us, contains no general preamble; except one, formed by a collation of the introductions of its first, third, and fourth sections: For the first of these is confined to removals from one Irish county to another; the third, to migrations from Ireland to Great Britain; and the fourth, to escapes from Great Britain into Ireland: whereas the general purview of the act extends to all those cases; viz. of escapes

from county to county; and reciprocally from each of the islands to the other. Secondly, thus collected, the general preamble of the act before us, is substantially equivalent to the joint preambles of the 23rd and 24th Geo. 2nd. The only difference is, that the 24th of his late majesty, being an amendment of a former statute, of course contains a special and pointed recital of the omissions and inadequacies which it meant to cure; whereas the 44th of the king, being no amendment of any former act, includes no such reference, nor any such recital.

Another enactment, of the fourth section of the present statute, seems to favour my opinion, that the cases which parliament had in contemplation, were those of persons who had been in Great Britain; and having there offended, removed afterwards to Ireland.

The passage to which I allude is that, by which the British magistrate “is authorized to proceed with regard to such person,” when brought before him, “as if he had been legally apprehended in England or Scotland.”—That is to say, as if he had not quitted the country, of which he had violated the law.

Excepting the few digressive remarks which have just occurred, I have hitherto confined myself, not only to the 4th section of the 44th of the king, but to its mere *enacting* parts; without drawing any arguments from its preamble, or recitals.

I now, *without travelling beyond this clause*, would conclude my observations on it, by calling the attention of my hearers, to the introductory sentence;—which expressly states, that the evil and “inconvenience,” for “remedy” of which, its provisions are enacted, is “the *escape* into Ireland of persons guilty” (not of offences, but) “of crimes, in England or Scotland.”

But this introductory sentence goes farther still. The evil, to which it proceeds to apply a remedy, it states to be the *like* inconveniency, with that recited in the preamble, and corrected by the provisions of the *preceding* section.

Thus the introductory part of the third section becomes, by reference, incorporated with that of the fourth; and we may have, and ought to have, recourse to the former, for the purpose of explaining the doubtful enactments of the latter.

What, then, are the introductory recitals of this third section?

- 1st. That it may happen,
- 2ndly. That felons, and other *malefactors*,
- 3rdly. *In* Ireland, or Great Britain,
- 4thly. Make their *escape* reciprocally *from the one island to the other*.
- 5thly. *Whereby* their offences often remain unpunished.
- 6thly. By reason of there not being sufficient provision by the *laws* in force in Great Britain and Ireland *respectively*, for apprehending and transmitting such of-



fenders to the country in which their offences were committed.

7thly. That for remedy thereof, it be enacted, as then follows.

These several passages, forming a preamble, which belongs as properly to the fourth section as to the third,—I shall now proceed to consider *seriatim*.

First, The words, “*it may happen that malefactors escape*,” are prospective; and, when connected with the following expressions, “*shall reside or be*,” suggest a residence, ensuing upon such preliminary elopement.

And, by giving a different interpretation to these latter words, we might be guilty of more than a merely critical transgression. We might turn this act into an *ex post facto* law; which should not only bring a stale offender to justice, by infinite (or at least indefinite) retrospection; but might, after a lapse of many years, pervert a lawful action to a crime. As where, for instance, the act prohibited in England, had been, when done in Ireland, permitted, by the laws of that then distinct and independent realm. Thus the statute would be construed to do that, which those who oppose my construction, not only admit, but insist that it has not done; it would create, not merely a new amenability, but a new offence.

Secondly, if the term *malefactor* (not found in the first section, which extends clearly to inferior offences), be applied to persons charged with trivial misdemeanors, the application will at least be novel and unusual; and can only be supported by obsolete research.

To suppose that parliament intended to describe, under the opprobrious title of malefactors, persons guilty of the slightest and most pardonable transgressions, might be to impute to them phraseology, disproportionate at the least. Such a construction would stigmatize as a malefactor, any man, who, under the influence of the most intolerable provocation, committed a merely *constructive* assault by raising his hand, without striking the provoker. It would ascribe to the legislature the improbable intention, that if, after having lifted his hand in England, any business or accident brought such a man to Ireland, he might, after the interval of half a century at least, be hurried without bail or mainprize on board ship, and carried back to the place from whence he came; and which such a construction would transform, from the abode of freedom, to a gaol.—The place where he had been betrayed into this imprudent gesture; and where, after a tedious imprisonment and irksome voyage, he might probably, on conviction, be fined sixpence, and discharged.

What a horrid instrument of envenomed and oppressive vengeance, in the hands of an implacable and malignant foe, might—not the statute, but this perversion of it, supply!—Can we believe that, by the epithet *malefactor*, parliament designated such a venial trespasser as I have described?—Yet, unless we believe

them to have so intended, the case of judge Johnson is not within the designation. For a libel is no more than a misdemeanor: and if persons charged with libelling be *malefactors*, we must admit that the grievously outraged man, who merely elevates his hand against his reviler, is likewise a *malefactor*; and, as such, within the law.

Indeed *libel* ranks beneath even the slight transgression which I have noticed. For a libel *not being*, but only *at the utmost tending to*, a breach of the peace, is not an offence, for which sureties of the peace could be required; if we may trust to the authority of 1st Lev. 139; and to the judgment of lord chief justice Pratt, in the case of the king against Wilkes; as reported in 2nd Wilson, in the State Trials, and in a Digest of the Law of Libels.

Indeed, though his lordship there declares it to be “absurd, to require surety of the peace from a libeller,”—yet he seems to admit that there was one case (I mean that of the seven bishops), in which the contrary opinion had been maintained. But as he denies that case to be law; or an authority to prove any thing save, “the miserable condition of the times” when it occurred,—I could not, upon the whole, desire to see doctrines, recognized in the case of the seven bishops, used to sanction proceedings against the twelve judges of this country.

This doctrine of lord Camden, that sureties of the peace *cannot* be demanded of a *libeller*, becomes more material in support of my argument, and in exclusion of libellers from the class of *malefactors*, if we collate it with 2nd Hale, P. C. 136; where it is laid down that *malefactors may be bound to their good behaviour*.

In Wilson, and also in the State Trials, my lord Camden is made to express a farther opinion; viz. that it is absurd to require *bail* of a libeller. But not being able to reconcile this latter expression with either principle or practice, or with other dicta, which occur in the same case, I presume that the reporter must have made some mistake.\*

Therefore, declining to avail myself of a doctrine, which I cannot understand, I confine myself to repeating, that a libel is no more than a misdemeanor; and that all such offences are bailable at the least (Com. Dig. tit. Bail, F. f. 3, page 661).

And though the moral turpitude of some libellers may greatly exceed that of the constructive assailant whom we have noticed, yet there might be libels, which, in *foro Conscientiæ* (the tribunal where all discretionary punishment is defined), would be little, if at all, more culpable than his assault.

Libels include many and various shades of guilt; from atrocity of the deepest gloom, to a twilight verging the pure horizon of innocence itself.

There are libels, which are false and poi-

\* See p. 106.



sonous. There may be others, which are true; and which might be harmless,—if it were not for the proud and angry passions that they rouse. Enraged to find their faults, or absurdities exposed, vanity may tempt those who are so detected to break the peace; and thus the malice of the libelled serves in some degree, to constitute the guilt of him that libels: the tendency of such publications to create animosity being, according to sir William Blackstone (4th Com. 151), the whole of what, in a criminal prosecution, the law (until conviction) can consider.

The case of unwritten defamation is widely different. There, the words must impute a crime; and must impute it falsely. In such cases, therefore, there is a *malum in se* on the part of the (yet not prosecutable) offender; and towards constituting *this* slanderer's guilt, we need not have recourse to the spite of his opponent.

That I do not misrepresent the law, by supposing the case of a *true* libel, cannot be denied. For, from the established maxim, that on an indictment the truth of the libel will be no defence, we must infer that such anomalies, as true libels, may exist.

But, feeling that what *technically* amounts to libel, may ethically be a slight and trivial fault,—not only the judges of the King's-bench, the Custodes Morum of the country, will generally refuse an information, unless it be pointedly and distinctly sworn, that the written charge is untrue (Doug. 284); but after conviction, on an indictment, the Court may take the truth of the writing, and other circumstances into consideration; and inflict a mitigated punishment in a venial case. In-somuch, that after his voyage and confinement, the libeller, like the assaulter, might have to pay no more than sixpence in the shape of fine.—In such an event, how stunted would the vengeance of a resentful prosecutor be, who was not permitted to carry his victim, without bail or mainprize, beyond sea!

Again, another species of libel might be remedial; if it were not that no transgression of the law can be so held; and that the vanity and selfish passions of those, whose conduct they regarded, might cause such writings to irritate where they would otherwise correct. So far from being likely to find a modern Aristides, who, at the desire of an obscure and illiterate fellow-citizen, would himself write the unjust suffrage which should exile him from power, we might sometimes, amongst future statesmen, meet with those who would seek to crush with the heaviest vengeance of the law, such as truly exhibited their errors to a suffering public; and would try to ascend by steps, not of legislative frame, but of their own unconstitutional construction, to the very pinnacles and loftiest apices of our code; in order to pounce with the greater force, upon their quarry, from a distance.

Therefore, no libel can be regarded as being useful in fact,—any more than it is permissi-

ble by law. But the shades of criminality, as we have seen, are very various:—and, as by our present decision we establish a general rule,—it should be assumed that the case before us is one as venial, as might, by *possibility*, occur.

Let me not be understood to say, that the present is a case of slight transgression. It might, on the contrary, turn out to be one of deep enormity. It will be for a jury, if the matter shall come legally before them, to pronounce whether the prisoner be innocent or guilty; and if the latter, it will be for the judge, in measuring the punishment, to define the atrocity or slightness of his offence. Meantime, I assume the case to be a venial one; merely because such a case might occur; and to such a case our present decision would apply.

If I sought to give examples of less pardonable defamation, I might instance a gross libel on his majesty, and on our establishments in church and state; said to have been published, I will not specify when or where; so that to no publication can my description be applied, which does not come glaringly within it, by being a seditious libel. I might notice a most calumnious and groundless rumour, which some malicious slanderers sent forth,—that persons connected with the government, forgetful of such connexion, gave this libel encouragement and circulation. I might advert to a scandalous report which went abroad, that a person, pointing at one of the judges as he administered justice from the bench, was heard to say, “that scoundrel will not long sit where he is: sufficient evidence is procured against him.” I might remind my hearers of some printed scandal, directed against the magistrates of a respectable county; and involving in its obloquy the general loyalty of Ireland; or I might allude to a piece of slanderous derision, contemptuously inscribed to Mr. Justice Fox, and falsely attributed to a gentleman of the bar. I might throw in the example of the like *pus atque venenum* levelled against me, and subscribed with a real or fictitious author's name. In this invective (erroneously, perhaps, ascribed to a pensioner of government) I am (in order to promote a due respect for the administration of justice) represented to the public, in my judicial character, as vain, empty, capricious, ignorant, ill-tempered, malignant, servile, and corrupt. I might hint at a false rumour, which some have contrived to spread, that the press of this country, whose freedom, on the contrary, so strongly supports our constitution, has been suffocated by the combined efforts of menace and corruption. Or, lastly, I might recall an equally-false report, that one judge was publicly declared to have composed those writings, for which another judge is now said to be indicted. Such a declaration is by rumour alleged to have proceeded from one, whom no man that knows him can respect more than I do; whose public virtue I



will admit to be equal to his private worth; and who, if he were a monarch, might, I doubt not, prove a father to his country.

If it were certain that the above cases had occurred, I perhaps might cite them as instances of heinous defamation. But I cannot well suppose them to have all happened;—and even if they had, I should feel more pleasure in commending (though to some portion of this praise I might myself perhaps lay claim) the lenity, which has forborne to take proceedings against such offenders.

If I have been endeavouring to dilute the criminality of libel, and reduce it to its proper and its legal standard, I might refer it to some perhaps of those who hear me, whether it would be easy to pitch upon a man, who has fewer motives for being partial to calumny than I have.

I therefore proceed with the less scruple to observe, that it is no answer to what I some time ago objected, to assert, that libel being *maleficium*, he who is guilty of it is *malefactor*. The argument would prove too much; and therefore it proves nothing. “*Crime and misdemeanor*” (says judge Blackstone) “are, properly speaking, synonymous terms.”—Yet who would pronounce that a statute, purporting to relate to *crimes*, must therefore be extended to misdemeanors? When the same learned commentator informs us farther, that, by the *Norma loquendi*, common usage, the word *crime* denotes offences of a deeper dye; while smaller faults are comprised under the gentler title of *misdemeanor*.

Indeed, if *maleficium* were the radix, from which these statutable *malefactors* sprung, then every person guilty of a *tort*, every wrong-doer might be a *malefactor*, within the meaning of this act. For every civil action, which is not founded on a contract, arises (and is held to do so) *ex maleficio*, or *delicto*; and the general issue which a jury, in these latter cases, has to try, is, whether the defendant be guilty or not?—Thus a man, charged with such a conversion as might merely entitle the plaintiff to recover against him in trover, being accused of *maleficium*, would be a *malefactor*, by the statute in that case made and provided: and as soon as the declaration (*i. e.* charge) was on the file, might, if the venue were laid in England, be hurried over, without bail or mainprize, to that country.

Or again (and note the dilemma), restrict the operation of the act to public wrongs; and mark what follows from the construction which I oppose. He who speaks the foulest, falsest, and most injurious scandal, is not an object of legislative rigour: whilst he who writes and publishes what is strictly true, and eminently venial, and only provoking because the person written against is vain—shall be caught within the talons of this (so construed) penal law.

The above allusion to *delictum*, and forced construction, which it is sought to put on the

word *malefactor*, reminds one of what is recorded by lord Clarendon and Mr. Hume, to have taken place in the disturbed reign of the unfortunate Charles 1st.

The ruling powers (say these historians) then invented “the term *delinquents*; to express a degree and species of guilt, not exactly known or ascertained. In consequence of which invention, many of the nobility and prime gentry found themselves involved in the crime of *delinquency*. Whoever incurred the displeasure or suspicion of administration, was committed to prison, and prosecuted, under the notion of delinquency. After all the old gaols were full, many new ones were erected; and even the ships were crowded with the gentry, who languished below decks, and perished in those unhealthy confinements; while the government, in the mean time, established the maxims of rigid law, and spread the terror of its own authority.”

From the second passage in the preamble to the third clause (which by adoption is become the preamble to the fourth) I therefore am inclined to pronounce, that the offence charged upon judge Johnson, not being one of the *majora crimina*, he is not, by common usage, or in technical language, a *malefactor*: that, consequently, his alleged transgression was not in the contemplation of parliament; and that on this ground he is exempt from the operation of the present act.

It is true that this argument might operate to protect a person, who having committed a gross and aggravated misdemeanor in Great Britain, had removed into this country, to elude the law: and thus a mischief would arise, and an intention be frustrated, which it might not be unreasonable to attribute *conjecturally* to the legislature. Then let our lawgivers (if to their wisdom one seems wanted) frame a statute, which, without departing from the legitimate rules of construction, we may interpret to embrace such misdemeanors, if attended with escape.

But let us not meantime found conjectures as to the intentions of our parliament, on matter dehors the act which we are reading, and still more dehors the maxims of the free government under which we live.

Let not those who but now, imprisoning themselves within the enactments, refused to search for the lawgiver's intention in even the neighbouring preamble, inconsistently intrench on the extensive ground of vague surmise, to make a breach in that constitutional mound of freedom, the Habeas Corpus act; by rejecting bail from one charged with a merelyailable offence—on the spot where the capture has been made; and where law and justice concur in directing that bail should be received. Let us not make a practical and pernicious *bull*, in endeavouring to secure a part, by a sacrifice of the whole; in removing the foundation, to complete or decorate the building. Let us not commit a more heinous offence than libel, by so straining an act of par-



liament, as to risk the subversion of the constitution. Let us on the contrary recollect, that one of the most fundamental principles of law is this; that no man, apprehended for a misdemeanor, who can find security for answering a charge of which the law presumes him innocent, shall be deprived of his liberty for a single moment; or removed even an inch from the spot where he was taken:—much less “*exulet—vel utlagetur, vel aliquo modo destruetur*”: much less shall he be sent an imprisoned exile from his country; an outlaw, beyond the sphere of his native code; to be ruined in his health, his character, and fortune; and this perhaps for the lowest of all offences—the statement of a truth, by which some vindictive man, instead of being corrected, is annoyed.

No: as yet the bench of Ireland is independent. If it ceased to be so, I should cease to sit upon it; and while it does (and may it long!) continue free, I will never convert myself into a legislator by construction—for the purpose of repealing the Habeas Corpus act, or abrogating Magna Charta. That the legislature will annul either, I am far from fearing or predicting: But if ever it should be their intention so to do—the words resorted to for the purpose, in order to their being efficacious, *must be express*.

*Thirdly*: the malefactors, spoken of in this preamble, are described as being *in Ireland or Great Britain*: that is to say (whilst we are considering the fourth clause), as *in Great Britain*.

Thus this passage is consistent with the rest; and favours my idea, that to give operation to the statute, the offender whom it is sought to arrest in Ireland, should have been *in Great Britain* when the offence was committed.

*Fourthly*: the last-mentioned sentence, if it wanted explanation, is explained by the statement which next follows, *viz.* that such malefactors may *make their escape* from one island to the other:—to remedy the mischief arising from which *escape*, is the object which the legislature professes to have in view.

Now how a person, already in Ireland, and there quiescent, could contrive at the same time to be eloping from England thither, I confess myself at a loss to comprehend.

Indeed this appears to me to be one of those impossibilities, which are equivalent to a change of sexes; and which therefore, on the authority of lord Coke, we may doubt the competence of parliament to enact.

Therefore, judge Johnson having been in Ireland, from the year 1802 to the present time, must have found it impracticable to escape thither in 1804; and consequently cannot be within the meaning of the act, so far as this preamble guides us to its true construction. His case not being within the evil, is not within the remedy.

On a matter not before me, I am not bound to give an opinion. But it might, perhaps,

with more than plausibility, be doubted, whether in the case of *higher* misdemeanors, attended with escape, there would be unreasonable rigour in refusing bail from the offender, until he was reconveyed within the pale of those jurisdictions from which, after outraging them, he had retired. The elopement might at once be evidence and an aggravation of his guilt, sufficient to render him, properly speaking, a malefactor; and justly to deprive him of part of the privilege of bail. Besides, his escape was a wrongful act; of which we perhaps should be allowing him to take advantage, if we admitted him to bail, before he were brought back. But to make this reasoning apply, there must be *an escape*;—and the rule should be confined to misdemeanors of a serious nature. In a word, it will be for the legislature to make such a rule, if such be wanting. I merely doubt whether it can be collected from a sound construction of the act before us.

*Fifthly* (to return): the preamble goes on to state, that the only way in which these escapes are mischievous, is this; *viz.* that *thereby*, the offences remain unpunished. Now those who apply the enacting words which follow, to the situation of the present prisoner, lay the basis of those enactments in a false recital. For the recital would be untrue, if it were interpreted to state, that in the case before us, any such mischief or *impunity* need arise.

The misdemeanor, charged to have been committed by this malefactor *in England*, is a libel: and for any thing we can know to the contrary, a venial libel; containing nothing but the truth. The definition of libel, as we have already seen, must be comprehensive; in order to be commensurate with the spite and insolence of man.

The necessity for drawing a line thus constrains us to admit a doctrine, which might (I grant) be pushed to inconvenient lengths. The prose writer, who by depicting their deformity, endeavoured to scare or banish slavery, or vice, might be punished as a libeller, when he hoped to be honoured as a reformer,—for having unwittingly sketched a likeness of some tyrant or malefactor, as striking and as casual, as that which we have seen of Chaucer, traced by the sportive hand of nature, on a pebble:—whilst the poet, who deserting the safe labyrinth of “no meaning,” should rashly venture to “tell either truth, or lies,” might repent him, as bitterly as Horace of his Iambicks: or if he strayed into a perhaps not “needless Alexandrine”—but one which, on the contrary, the subject much required, might find that, agreeably to the critic’s prediction, he had to do with “a wounded snake.”

Let me again protest against being supposed to assert the truth of the publication, which has produced the question now before

\* In the British Museum.



us. It would indeed be the reverse of true, if it denied the worth or honour of the justly respected, and truly excellent lord Hardwicke: if it disparaged the knowledge, or impeached the integrity of lord Redesdale; or represented my esteemed friend, and upright brother, Mr. Justice Osborne, as a man of corrupt principles, or meanly pliant dispositions.

But its contents are not judicially before us: nor if they were, could our decision properly turn on their enormity. Resting upon wider grounds, our determination would extend as an authority, to the most venial case, coloured with the slightest and the faintest tint of blame. Such a case we ought therefore to take the present to be.

Now it appears that the malefactor was in *Ireland*, at the time when the libel is alleged to have been written. Consequently, if guilty, he must be so by having transmitted it to England.

If he did so by dictating the contents to another, this was a publication, for which he may be punished here.

Or if a libel were contained in a letter, written in any Irish county, and there delivered to a messenger, or put into the post-office, he may be prosecuted, where he thus departed with the possession of it. That is to say, he is liable to be proceeded against, in Ireland. He must be so, as long as the case of Metcalfe against Markham, in the 3rd Term Reports, 652, is law.

For where the one transaction is at once a private injury, and public wrong, the same circumstances which would suffice to change the venue into a given county, on the allegation that the cause of action had arisen there, must also furnish ground of indictment within that county.

Thus, though judge Johnson should be guilty, his offence need not remain unpunished; and therefore his case does not come within the mischief, which this statute was emphatically meant to remedy.

While I am upon this subject, let me add, that if a case were conceivable (which by me it is not), where a libeller, without quitting Ireland, could be guilty of publication *exclusively* in England,—and consequently where, not being amenable to British power, he would, unless by virtue of this act, escape punishment *altogether*—still the present act should not be applied to such a case. For we could not draw the line; but must likewise extend the statute to other cases, not within the mischief against which the legislature was providing.

If this act be defective, it only follows that it should be amended. Meantime our business is not to add new clauses; but to expound those which are set before us. Besides it is clearly better that one case should escape the statute, than that by straining to catch this, we should grasp others, which parliament never intended to include.

Resorting to considerations of policy, as

guides to sound construction, I would observe, that such an extension might produce the most unconstitutional effects.

It might enable a government in Ireland (I advert to future, and merely possible, not actual circumstances or times), which found its conduct strongly animadverted on, and chose to consider the animadversion as nothing the less libellous for being true,—to withdraw the trial of the question from an Irish tribunal, and take it from a jury of the vicinage, to the inhabitants of (juridically) a foreign country:—to persons less cognizant of the situation,—less anxious for the liberties,—less interested in the welfare of Ireland than we must be,—and who would be less exposed to the oppressions of its government, if these existed:—to persons of whom some (as there seems too much reason to apprehend) know about as much of the situation and interests of this country, as they do of the interior of Africa, or of the kingdom of Ava.

It might enable them to remove the case to a tribunal, less competent than our own, to pronounce upon that truth, which may be urged to extenuate, though not to justify the offence.

It might enable them to make choice of a tribunal, judging of the state of this country, and the conduct of its government, from the reports made by those very ministers, who thus changed the *venue*, from the place where (if any where) the crime was *actually* committed, to where it was only perpetrated *by construction*—ministers, who might detain their opponent without bail or mainprize,—hurry the most dignified of our magistrates on board ship, and convey them, in the guise of felons, to another country,—there to regain their liberty, when they could prevail on strangers to be their bail,—there to abide their trial, without the power of enforcing the attendance of witnesses to prove their innocence.

When the legislature shall plainly enact that this may be done, then, but not sooner let us recognize a law, which to common eyes, and perhaps but superficial observation, appears so little favourable to the liberties either of the subject, or of the press.

The time might come, when such abuses, as I have been noticing, would prevail.

I shall here take the liberty of digressing to a collateral subject; nearly connected however with the principal inquiry; and still more closely allied to what I hold it my duty to assert: I mean the respectability and honour of the judicial station.

I allude to a letter (which while I was an assessor of my Lord Chief Justice, I heard read); written by sir Evan Nepean,\* and addressed to Mr. Justice Johnson; in which the former very properly suggests, that it would become the punctilious dignity of a judge to promote, rather than obstruct, the

\* See it, p. 95.



investigation of his conduct and of the truth of any criminal charge preferred against him.

Whether Mr. Justice Johnson be innocent or guilty, is a question neither within my power, nor my province, to decide. It is *questio facti; ad quam Judices non respondent*.

But I owe it to the character of that exalted (and I hope respected) order, to which I have the honour (for it is still an honour) to belong,—to observe that he does not seem to me to have shrunk from trial, or betrayed unwillingness to be amenable to justice.

He has but manifested a reluctance, compatible with utter innocence; and which, in similar circumstances, I should feel: a reluctance to be tried before a distant, and comparatively incompetent tribunal; without means of securing the testimony of witnesses in his own behalf.

Besides, I may suppose him to have entertained the opinion, which I avow myself to hold;—viz. that any arrest of him, under this statute, is illegal. If such were his opinion, he would have owed it more to the laws and liberties of Ireland, than to himself, to dispute the validity of an unconstitutional apprehension: and he would, at a moment critical to the bench, and to the country, have been a traitor to the privileges and independence of his order,—and to the freedom, laws, and constitution of the island which gave him birth,—if he had not acted precisely as he has done:—by eluding, with an address and presence of mind which do him credit, what might have seemed, but certainly was not, an attempt to hurry him beyond sea, with a celerity, which should outstrip the languid march of the Habeas Corpus.

I impute nothing to those who executed the warrant. It commanded expedition; and perhaps they but obeyed it. But (spite of the respectable support which it has obtained), I impute much to a construction, which gives such efficacy to this process; whilst it paralyzes an act on which our liberties depend.

I recoil from an interpretation, which might, in many venial cases, render any resort to the protection of the Habeas Corpus act, *incompatible* with obedience to the orders of a warrant, which enjoins instantaneous removal by the most direct way; and will not tolerate the least delay, or slightest circuitry of deportation.

How happy his majesty's government ought to feel, that though the attempt was merely seeming, the failure has been real,—to withdraw the prisoner's claims (*valeant quantum*) to liberation, from the cognizance of those legitimate tribunals, which have since sitten in judgment on them!—that in his present infirm state, he is not yet deposited in an English dungeon, there to pine, until humanity should induce strangers to become his bail;—or until (wind and weather, and their own liberality permitting) his friends on this side of the water should cross the Channel for his relief!

If honourable firmness in one instance, will warrant a presumption against baseness in another, the measures taken by judge Johnson, to bring the case of his country before the law, rather furnish proofs of innocence, than imply consciousness of guilt.

Nor (to revert to the correspondence which was read at the chamber of my Lord Chief Justice), is it any answer to what I have been urging, to observe that the prisoner might have escaped the dangers which have been stated, by giving the security ascertained by Mr. Marsden;—and measured (as might seem, from the letter of sir Evan) by the authority of the under secretary himself, and without the concurrent sanction of the lord lieutenant's pleasure.

It may be even admitted, that those perils by land and water might have been avoided, by Mr. Justice Johnson's signing the undertaking, prescribed by Mr. Justice Bell.

But, in acceding to either proposal, he would have recognized an authority to arrest him; and thus, if my construction of the statute be a right one, would *pro tanto* have compromised the laws and liberties of his country. Nor do I wish to disparage the liberality of the gentleman, who proposed to judge Johnson to give security for his appearance: I presume he gave the statute a construction, which is now sanctioned by great authority; though it strikes my humble understanding as being unconstitutional, and false.

I therefore interpret as an indulgence, conduct which might otherwise be regarded as a specimen of rigorous ingenuity, and adroit oppression.

I also indeed heard (at my Lord Chief Justice's), a third offer made: that if judge Johnson would but confess himself the author of a libel, he should be gratified in his wish for a trial in this country. But even this candid and liberal proposal, one can conceive that an innocent man might possibly reject.

For, when turned to familiar language, see what seems to be its amount.

"Relieve me from the necessity of proving, what perhaps I could not prove. Rebut the presumption of the law that you are innocent; and though you may not come out, like Barnardine, *to be hanged*,—confess, at least, that you are guilty. If you do this, take my word for it, you shall not go to prison. On the contrary, I will send an issue to an *Irish* jury, to try and inquire whether your confession be the truth?—And as for my lord Ellenborough's warrant, it shall be disobeyed."

I do not say that such was the proposal; but by a simple man it might have been so understood.

To return from this not foreign or irrelevant digression. In declining the jurisdiction of an English tribunal, judge Johnson may not escape punishment; nor is it to be intended that he wishes to evade it.

On the charge made against him, he may be tried in Ireland; and in this, as in the



other part of the united kingdom, a suitable punishment would be the consequence of his conviction: for the judicial power is not yet abrogated amongst us.

That if he wrote the libel, he did so in Ireland, is plain from this, that he is sworn to have been there, at, before, and since the time, when his offence is laid to have been committed.

That by writing and sending it, he became subject to a prosecution here, may be inferred, as well from authorities directly in point,—as (without any case) from the mere reason of the thing.

For, the writer's sending of such libel was the *sine quâ non* to its publicity: and the only act done on his part, procuring another to publish; and thereby amounting to a publication by himself.

For, not having been in England, he cannot in any way have published there, save by conveying thither the manuscript, from which printed copies were dispersed.

Now if, on the one hand, this act be not a publishing, he is *unconnected* with the fact of publication in England. The *privity* between him and the circulator of the scandal is destroyed. The fact of publication being essential to his guilt, he thus becomes utterly absolved; and escapes punishment, only by being innocent of the charge.

On the other hand, if the writing and sending amount to publication, they must do so where they occurred. They must do so in the place from which the manuscript has been sent. Thus, having in Ireland published the defamation, the wrong-doer may be there convicted, of an offence which he has there completed.

If (as in the king against doctor Hensey, 1st Burrow, 646) a letter, though intercepted, may be an overt-act of treason; and (per lord Mansfield) one, dated at Twickenham, is an overt-act in Middlesex;—and if in Jackson's case\* (tried in the King's-bench here), a letter written in Dublin, and found in the general post office of that city, was held to be an overt-act of treason there,—by inevitable analogy, a libel, put into the Dublin post-office, is there *published*; nor less published, if delivered to any person there. Indeed Comyns's Digest, title Libel, Publication, B. 1, puts the matter beyond controversy.

It is no answer, to allege (nor am I called on to deny), that if an offender sent a libel to London, to be published, it might be his act in that city, if the publication took place there (1st Strange, 77).

It is sufficient for my purpose, that the writing and sending amounted to a publication in Ireland; so that, though this statute were never passed, the writer *need not escape punishment*; consequently that his case, not coming within the mischief which is recited, does not require the remedy which is pre-

scribed;—and that it would be as unnecessary, as it might be unconstitutional, to drag a person, against whom such an accusation was preferred,—to a distant tribunal,—where the essential act of publication by *him* could not be alleged really and *de facto*, but merely by construction of law to have taken place;—where no witnesses, competent to exculpate him, could be found;—and where he could not, by means of compulsory process, collect any.

Such a construction of the statute would not only, at the expense of the personal liberty of the subject, give a (perhaps vindictive) prosecutor *electio fori*,—but might countenance his making choice of that tribunal, where the person accused would have the least chance of a fair trial.

To suppose the possibility of malice, which might lead to harsh and oppressive proceedings, on the part of a prosecutor for libel, is not to indulge in any conjecture unsanctioned by the law.

On the contrary, libel was held a public offence at the common law, for the very purpose of turning into a gentler and more innoxious channel, that desire of vengeance, which the same law ascribed to those, who found their reputations sported with (4th Bac. Abr. tit. Libel, p. 449, and the authorities there cited).

Again, that sending a libel is a publishing, at the place from which it is sent, may be inferred from hence, that not only he who publishes (in the ordinary sense),—but he who procures another to do so, is guilty of the publication (Com. Digest, tit. Libel, Publication, B. 1).

And if guilty, he must be so, where he perpetrated this act of procurement: though he may, by construction of law, be also guilty of the same elsewhere (4th Bac. Abr. 458; and the cases cited in the margin).

But what is said by my lord Coke, seems to put the matter beyond doubt; and to ascertain that the writing and sending of a libel, constitute a publishing in the place where those two acts are done. He says that if one finds a libel, which concerns a public person, he ought to deliver it to a magistrate, in order that the libeller may be punished.

Now, if the author had not published, he would not be a libeller (Com. Digest, tit. Libel, Libeller, C. 1).

But, in the case supposed by Coke, he has no otherwise *published*, than by sending a libel which has been intercepted. Therefore writing and sending must amount to publication at the place from which the libel is sent.

Be this, however, as it may, it appears by affidavit, that of this alleged libel, there occurred in Ireland that vernacular sort of publication, which consists in the dispersion of printed copies.

And the cases collected in 3rd Bac. Abr. tit. Habeas Corpus, page 13, and in 2nd Hawkins,

\* See it vol. 25, p. 783.



ch. 15, prove that of these documents, as they do not contradict the return, we may take notice.

Therefore, even those who dissent from my application of the authorities which I have cited, must admit that there has been a consummation of the offence in Ireland; and consequently that the offender is punishable here.

This consideration ought, at once, to exempt his case from the present statute. For the mischief, to which it professes to apply a remedy, is that of offences often remaining unpunished:—and as well on principles of right reason, as *in favorem libertatis*, we must construe these expressions to describe the mischief of offences remaining unpunished *altogether*. The object of the legislature *must* have been, to guard against *total* impunity, or inadequate punishment;—which would not occur, where the party is liable in Ireland to the penalties of his offence.

As to there having been publications in different places, they all however flowed from *a single* act, the *once* writing, and *once* sending forth the scandal;—and to punish the author in London, would be, by astuteness and technical refinement, to inflict a double punishment for a single crime; and suppose two public justices within the united realm, instead of one.

The writing and sending are the fundamental and radical offence; from which, and not from any pretended repetitions of it, all the consequences have arisen. Therefore Ireland having been the scene of this offence, is emphatically the proper scene for prosecution.

In a word, if the prisoner wrote the libel he must have done so where he was. If this *can* be proved against him, he may be punished here. If it *cannot*, there is no evidence of his publishing in England. Therefore, he is punishable in Ireland; or he is not punishable at all.

The *sixth* recital, in the preamble to the third section, is the want of *a sufficient* provision, by the laws (recognizing their distinctness), of Great Britain and Ireland respectively, for apprehending *such* offenders; and transmitting them to that part of the United Kingdom, in which their offences were committed.

This recital suggests to me the following observations:

First, that no law is requisite for transmitting an offender, to the island in which his trespass was *constructively* committed; when he may be punished in that island in which it was *actually* perpetrated. And this act need not be so construed, as to supply what was not wanted.

Secondly, that the words "*such offenders*" are restrictive; and mean those *fugitives*, who had just been specified as the objects of the law. The words may be also properly referred to the class of "*felons and malefactors*," al-

ready noticed in the same preamble; and to which I do not conceive petty trespassers to belong.

Indeed if persons guilty of torts or misdemeanors be malefactors, it can only be because this latter word is *nomen generalissimum*. But if so, it includes felons: and the last-mentioned term must be rejected as superfluous, by those who would extend this act to misdemeanors.

On the contrary, compatibly with my construction, every word may be significant. Felons and other malefactors may mean persons having committed felonies, *aut alia enormia*. Malefactor may, for aught I know, or have been able to discover, have a precise and technical meaning in the Scottish law. Even if it have not, its introduction into the act from which it has been transcribed into the present one, might be necessary and useful. That was an act of regulation between England and Scotland; and there may be, and I believe are offences, atrocious and capital by the Scottish law, which yet are not felonies; if indeed the term felon be *at all* known in that code.

But, thirdly, a suggestion of greater weight is this; that unless we extend the operation of the act before us to misdemeanors, the recital which I have just extracted will be *false*. For it appears from the sixteenth clause of the English Habeas Corpus act, that persons charged with capital offences had been therefore transmitted from England to this country: and the previous legality of such a practice, the Habeas Corpus act may be thought to recognize. At least, it sanctions a continuance of the usage. Thus before the existence of the statute which we are interpreting, there was provision for the transmittal of capital offenders.

But this would be so far from rendering the recital false, that the paragraph would be more untrue, if it stated the law to have provided *insufficiently*, where in fact the law had not provided *at all*.

Then were the antecedent provisions sufficient? for if not, the recital before us will be satisfied; though we should not extend the act to the case of misdemeanors.—I conceive them to have been *insufficient*.

For, 1st, until the recent statute passed, if the government of the country where the offender *was*, might transmit him, at least *non constat* that the government of the country where he *was not*, could send to fetch him. Thus far then, the existing laws were insufficient. The preamble truly recites the insufficiency; and the enacting clauses proceed to supply the defect.

Secondly, The practice of transmitting capital offenders, from Great Britain and Ireland, reciprocally to each other, was a usage, between those distinct and independent countries, less referable to their municipal codes, than to their political connexions, and the *comitas gentium*, or Law of Nations.



The offender was transmitted, not under the warrant of a magistrate, but of a minister of the executive, viz. the secretary: and this warrant was executed, not by a peace officer, —but by another inferior servant of the state, viz. a king's messenger.

Therefore the Habeas Corpus act, in permitting such proceedings, rather tolerated so much of the law of nations, than strictly enacted the usage, as a breach of the municipal code.

Let me add, that still less does it directly, or by inevitable construction, recognize the PREVIOUS legitimacy of such a practice.

It is doubtful, *at the least*, whether it does not rather confer a new, than acknowledge a precedent *legal* authority. Without deciding on their previous legality, it sanctions a few innocent usages, *by way of exception*, —whilst it prohibits the continuance of such as were dangerous and oppressive.

At all events, that justly celebrated statute does not empower magistrates to issue, nor peace officers to execute, warrants for apprehending or transmitting capital offenders. It does not confer, on any person, a right of demanding such a process, *ex debito justitiæ*. It does not authorize to send for the culprit, from the place where he is *not*; but only to remove him from the place in which *he is*. Therefore, though we should restrict the operation of the present statute to such *majora crimina*, still the recital which it contains, might be strictly true; —that the provisions of the law were insufficient in this respect. —Nay, the recital might be true, though the Irish Habeas Corpus act contained a clause, parallel (*mutatis mutandis*) to the sixteenth of the English: which, however, it may be highly material to observe, is not the case.

Indeed, that previously to the act of the 31st Car. 2nd, that legal power did not exist, which, in the case of felonies, I admit the present act to give, appears from reports of equal authority with any which have been published since: I mean those of sir Edward Coke; and advert to the case of the lord Sanguire. There, Robert Carliel, the *principal* felon (and he was a murderer), having escaped to Scotland, my lord Coke expressly lays it down, that “it was impossible by legal process” (of the English law) “to apprehend the body of Carliel, being in Scotland.”

What did the king do?

In the first place, to use the language of this most celebrated of our reporters, “he consulted” (as was right for the executive to do) “with his judges;” and from their authoritative opinion he found, that “if this fact should be left to the ordinary proceedings of the law, Carliel, *the assassin*, could not be taken.”

In the second place, he had, with the best intentions, and for a useful purpose, recourse to the exertion of one of those extraordinary *prerogatives*, the too strained and frequent exercise of which (cruelly taken advantage of,

by the encroaching Commons), tended to bring his unfortunate son and successor to the block.

He issued his royal “proclamation;” and, to resume the words of my lord Coke, the assassin “was taken; not by any common power; —but by means of his majesty’s royal and *absolute* power only.”

The British constitution was as yet unsettled. The English government had not yet learned, what the Irish nation, I hope, never will forget: —what, so long as it is pronounced from the bench of justice, need not be taught amidst the clash of arms, —that in a free country, the *absolute* power of an executive is unknown.

The case which I have been citing, is in the Reports; part IX, vol. V, pages 120 and 121.

The *seventh* and last recital of the preamble to the third section is, that the enactments which there follow, are for remedy of the mischiefs precedently enumerated. Therefore, (unless these enactments be cogently express), to no case which does not come within the mischief, should the remedy (to the invasion of a subject’s liberty) be applied.

Thus what I have been urging will amount to this; that the *enacting* parts of the fourth section, do not *necessarily ex vi terminorum*, or *probably* from the context, apply to the circumstances before us; while the *recitals* of that, and of the preceding clause, instead of embracing, will exclude the prisoner’s case.

I have not been contending, that the enactments of a statute must be strictly commensurate with its preamble. On the contrary, they may be, and are often, more extensive. I merely hold, that where these latter are not explicit, we may resort to the preamble to explain them. Where the legislature recites a mischief, and provides a remedy, the *presumption* is, that a case not within the evil, is not within the cure. “*Stabitur huic præsumptioni, donec probetur in contrarium*;” —and to *rebut it*, the enacting words must be express. Besides, the construction which I am resisting here, would not so properly *extend* the enactments beyond the preamble, as *render them incongruous and inconsistent with it*. The preamble having recited the mischief of impunity arising from escape, —remedies it (say my opponents), by providing for a case where there is neither impunity, nor escape. And perhaps the case of the infamous Renwick Williams, cited in the third edition of Leach, and also in East’s Crown Law, might go to show that I have given too great efficacy to the enacting clauses of a statute: that these are liable to more control from the preamble, than I have supposed; —and that the letter of a statute (however plain), shall not prevail against its spirit and general intent.

The determination of the Irish judges, with regard to the White Boy act, goes also to establish the same subordination; of letter to spirit; expression to intent.

But did the omission, to insert a recital



which should include the prisoner's case, arise from inadvertence, or precipitation?

It would be disrespectful to parliament to suppose, that they could hurry over an act of such importance as the present, abounding with perplexing and slovenly omissions.

On the contrary, the preamble to the third section, which seems accurately drawn, states the case of an *escape*; and *nothing more*:—being in this respect even more confined than the introduction to the first clause.

Nor if, to meet the case of an *escape*, the legislature made peculiarly harsh and rigorous provisions (trenching on the ordinary rights and privileges of the subject), would it do any thing wholly novel and unprecedented. At least it would attempt nothing so unusual, as a construction embracing the present case, must accomplish.

Accordingly we learn from sir William Blackstone (4th Com. 298), that “such as being committed for felony, have broken prison, may *not* be admitted to bail: because this escape not only carries with it a presumption of their guilt, but is also superadding one crime to another.”

The same doctrine may be found in 2nd Instit. 188; and 2 Hale's Pleas of the Crown, 133.

Then whether is it more likely,

First, that the legislature adverted to cases of an actual and *de facto* presence in England,—the commission of a crime there,—and a real or presumptive escape from thence?—and that the act was intended to nullify this escape,—and by frustrating its effects, to prevent the total impunity of the flying offender?

Or secondly, that they had in contemplation a merely *constructive* presence and guilt in England,—by a person who *really* committed, and was responsible for, the offence *elsewhere*?—And thus that their object was, not to guard against a defiance of the law; but to enhance and multiply penalties for the *same offence*;—until the victim, with more reason than the first-born offender, might exclaim that his punishment was greater than he could bear?

To return,—it may not farther be improper to remark, that the marginal abstracts correspond with the construction which I am giving to this statute. And indeed whether I argue from these, from the text, or from the title,—I am disposed to pronounce, that judge Johnson's case, not falling within the mischiefs which are recited, cannot come within the remedy which is prescribed.

But though, until he be found guilty, the innocence of every man is presumed, yet this act does not provide the party accused with means of compelling the attendance of witnesses, to make this innocence appear.

Was this also one of those *maculae, quas incuria fudit*? a merely careless, giddy, and forgetful omission?—No. It is not our lot to be subject to a legislature, which could thus negligently trifle with those liberties and rights,

in asserting which, so much valuable blood has been often shed!—On the contrary, the omission to secure to persons situated like judge Johnson, the means of a fair trial, and a full defence, rather justifies my conclusion, that parliament did not mean to extend their statute to his case.

Where the offence was really, if at all, committed, *there* the most material witnesses are likely to be found: so that in the case of *migration*, that process might not be necessary, which this act omits to give. Therefore to cases of migration the act was intended to apply.

But (to recur parenthetically to a former topic), it may be said, that if “*reside*” be construed (*quoad* misdemeanors) to mean a residence ensuing on an antecedent removal or escape, it must in capital cases also signify the same. Admitted. And where is the mischief that will ensue? If the felon perpetrated the act in England, and thence escaped to Ireland, he perhaps might go unpunished, if it were not for the 44th of the king. But if at the time of the offence committed he was resident in Ireland, he must have perpetrated it *there*; and could *there* be punished for it.

And even though his offence were accessory to a principal crime committed in England, still he ought to be punished in Ireland; under the spirit of the statute of the 2nd and 3rd Edw. 6th, ch. 24; which, whilst it altered the common law, attended to the constitution; and directed that accessory offences should be tried in the county in which they were committed.—*A fortiori*, ought the offender to be tried here, where he is not charged with having been accessory to a crime perpetrated in the neighbouring island; but is accused of a species of offence which does not admit of accomplices; and where if culpable, he must be a principal, and have consummated his guilt in Ireland.

But, again, this statute does not provide the means of giving bail in Ireland. Need I prove that this was an indispensably necessary provision?—Could an Irish magistrate, without the special authority of an act of parliament, take bail in a matter not within his jurisdiction? and on a charge which he is not bound to know to be bailable, by the English or Scottish law? How, or to what, would such a recognizance bind the party? By what acts, or what omissions, could he forfeit it in this country? Of what court in Ireland would it be a record? How could English or Irish green wax, or Scottish process issue, to levy the amount of this shadowy obligation, not to be amongst the rolls of any British or Irish court?—What should prevent the pleading *nul tiel record*, to any attempted estreat of such a recognizance?

Where the arrest is under the warrant of a British magistrate, the taking bail in this country by an Irish judge, would be a delusive and nugatory proceeding; substantially equivalent to an unqualified discharge.



Indeed this part of the case appears to me to be so plain, that to dwell longer on it might seem unnecessary, if it were not that I have heard it confidently argued; and that the opinion which I have formed upon the point, seems at once capable of being incontrovertibly maintained; and to be nearly conclusive on the true construction of this statute.

I therefore would ask what is a recognizance?

Blackstone answers that "it is an obligation of *record*; which a man enters into before some *court of record*; or magistrate, *duly authorized*." (2nd Com. 341.)

I should proceed to inquire whether an obligation, entered into before a court of record in *one* country, thereby becomes an obligation of record in *another*?

First, if it do not, the definition which we have just extracted from Blackstone, will not be satisfied. A pretended recognizance, entered into before an Irish court, will not be an obligation of record in England. In other words, it will be no recognizance there at all; nor binding as such, on the supposed cognizor.

But secondly, if a recognizance entered into before an Irish (that is to say, juridically, a foreign) court, be an obligation of record in England, then either such recognizance is of more efficacy than the judgment of an Irish court; or this latter will also create an obligation of record in England.

Then in an action brought in England, on a foreign judgment, the declaration might conclude *prout patet per recordum*; the defendant might plead *nul tiel record*; and on such a judgment, *indebitatus assumpsit* would not lie.

But on the contrary, the case of *Walker v. Witter* (1st Douglas 1,) ascertains that *prout patet per recordum* would be rejected as an improper conclusion; and that the plea of *nul tiel record* would be equally improper. For both conclusion and plea would erroneously imply, that a foreign judgment was a record of a court in Westminster.

And the case of *Bowles v. Bradshaw*, cited in the notes, proves, if necessary, that a judgment of the Irish exchequer is no *English* record; but a mere simple contract; on which *indebitatus assumpsit* may there be brought.

Thus the words "a recognizance entered into before a court of record"—mean entered into before a court of record, *in the country in which it binds*: and otherwise it is no recognizance.

"A recognizance," says Blackstone, "is an obligation of record."

It must be so: for the king can only take by matter of record.

In England he takes by matter of record there: in Ireland by matter of record in this latter country.

"A recognizance," continues Blackstone, "is not witnessed by the party's seal." (2nd Com. 341.)

And why? Because it derives its authenticity from a higher source.

"It is witnessed only by the record of the court." (Ibid.)

In other words, *patet per recordum*:—and (as lord Mansfield expresses himself, in the case of *Walker v. Witter*), "implicit faith is given to such record."

But his lordship adds, that "the record of a foreign court is clearly not that sort of record, to which implicit faith is given by the courts of Westminster-hall:" subjoining that "the difficulty had arisen, from not fixing accurately *what a court of record is, in the eye of the law*. That description is confined properly, to certain courts in England. Foreign courts have not that privilege."

*Be it remembered*—is a common initial injunction of records. *But lex neminem cogit ad impossibilia*; and it would be impracticable to remember what never had been known.

Yet those who contend that a man may commit a crime in a country which he has never seen; may fly from thence to another, where he has resided from his birth; and when overtaken, be brought *back* to that which he never quitted;—those I must admit to be consistent with themselves, when they hold that his recognizance may be a record of a court, in which it never was acknowledged or enrolled.

But "a recognizance is an obligation of *record*, either entered into before some court of record (being there taken by its officer) or before a magistrate, *duly authorized*,—and certified to the court." (2nd Bl. Com. 341.)

But if the court of record intended, be an English court, can we suppose that, by the word "magistrate," a foreign magistrate is meant?

An Irish justice of the peace is no magistrate in England. He cannot without transgressing the law, presume to exercise *there* the most insignificant magisterial functions.

Will a recognizance, ostensibly entered into before him who is no magistrate, satisfy the definition of an obligation of record, entered into before one who is a magistrate?

Shall he, who dare not attempt the lowest, accomplish one of the highest acts of magistracy? or shall a person before *him*,—that is to say *coram non Judice*,—bind himself of *record*, and be estopped for ever, from contradicting or evading the obligation?

Shall the English authority, which such a man could not exercise in England, flow to him from the circumstance of his being *out of England*? Or shall an act, performed before an obscure Irish justice of the peace, be of record in England, when it would not be so, however solemnly executed before any of the king's superior courts in Ireland?

I say would not be so. For I hold that the independence of the king's superior courts in Ireland, acquired in 1782, has not been theoretically forfeited by the Union; and that the King's-bench in this country, is not ministerial, or subordinate to that of England.

I do not deny that, if *duly authorized*, an



Irish magistrate may take and transmit a recognizance to England: so that it shall become an obligation of record in that country. I merely insist, that towards warranting any such proceeding, an authority by statute must be given; and that none such is conferred by the statute now before us.

Nor does this seem to have been an oversight on the part of the legislature. They omitted to give this authority by the third and fourth sections, because it was not wanted: those clauses being confined to unbailable offences; and to cases of escape.

Where they chose to confer such power, they have expressly done so. I mean by the first section of this statute; where it is specially provided that the endorsing justice shall take bail, and deliver the recognizance to the constable, who is *required to receive*, and transmit the same, to the clerk of the crown of the place where the offender is to appear; and it is farther (and not superfluously) enacted, that such recognizance shall be good, and effectual in law.

Thus the legislature has evinced, by the provisions of this first section, what law and reason had both shown before,—namely, that without the interposition of parliament, he who has no jurisdiction over the offence, cannot bail the offender: that he who cannot commit another to prison, is equally incompetent to deliver him to the custody of sureties; but that an enacting statute is indispensably necessary, towards enabling him to take, or to transmit a recognizance; and towards requiring those to whom it is transmitted, to receive it.

The legislature, I say, appears to have decided the question, in providing, by the first section, that where offences are bailable, the endorsing or other magistrate may *take* bail: a provision which would be superfluous, if without it the accused were entitled to give bail before him.

But the provision of this first section does more than ascertain the incompetence of the magistrate (unless under the authority of its enactments) to take bail. It shows the attention of parliament to the privileges of the subject.

If then, towards enabling an Irish court, or magistrate, to take bail, in a case of misdemeanor, circumstanced like the present, it were necessary that the act should contain a clause, empowering so to do,—can we ascribe to inadvertence, that no such clause is to be found?

I have heard this hinted; and that it is proposed to have the act amended in this respect. That would indeed be a serious amendment, whose operation was to become—not a partial and temporary suspension of the Habeas Corpus act; but rather its total and absolute repeal.

The hint has been attributed, with I know not what foundation, to a high and respectable

law officer\* of the crown, who from the commencement of this momentous discussion to the present time, though the prosecution be avowedly a state one, has not once favoured us with his aid or presence; so that I have had no opportunity of mootings with him the subject of this alleged insinuation.

Indeed his absence was the more to be regretted, because the delicacy of Mr. Solicitor General's situation,—said himself to be (what he must allow me to express my sorrow that he ever should be), an object of aggression in the present libel,—necessarily deprived us of his truly valuable counsel.

It is not alleged that the attorney-general is indisposed. It cannot be alleged that he has been occupied by business of greater importance than this before us; nor asserted that he has given up a question, argued with so much ability and candor by the Prime Sergeant: and still less can it be contended, that, aware of a difference of opinion on the bench, he has come forward to remove my difficulties, and bring me over to his side.

But why he has been away, I am persuaded the attorney-general could himself most satisfactorily explain; and could reconcile his absence with a strict and honourable observance of the duties of his station;—a becoming and merited respect for the Court of Exchequer;—and decent reverence of consideration for a question, deciding on the liberty of one of the judges of the land; and involving the first principles of that free constitution, which his royal master's coronation oath has pledged him to maintain.

Of all this I am aware; and think it likely that nothing but my own misapprehension could prevent me from perceiving, without the help of explanation, a consistency which may to others be apparent,—between the conduct which in this instance he has pursued, and the correct principles on which he is in the habit of acting.

Meantime while performing a duty, which I owe to the importance of the question, and the dignity of the Court, by (I trust, not indecorously or offensively, though with freedom) animadverting on a seeming omission on the part of Mr. Attorney General, it is superfluous to declare, that as I admire the talents, and professional knowledge of that gentleman, so, in doubting whether on this occasion, he has been critically correct, I mean no disparagement of his general character or conduct. Therefore in justice to himself and me, I confidently expect that he will not be offended.

Nor will I fear that any thing which I may have urged to day, can be misrepresented, or remembered to my injury, by others. I shall have roused no treacherous enemy into action: and even if I should,—yet knowing how free the country is, in which I live, I cannot suppose that his hostile activity would be suc-

\* The Attorney General.



cessful. The free doctrines which I have maintained, I should be sorry to look on as too bold; and still sorrier to consider as in any degree obsolete. Therefore in promulgating them, I cannot risk incurring the displeasure of those constitutional minds, which have the guidance of the state. Nor, descending from the government and *magnates*, to lower circles, could the sworn enemies of slander draw the sword in silence; and, *odia in longum jacentes*, wait with virulent, relentless, and lingering impatience, an opportunity for dark, calumnious, and irresistible revenge.

I know all this. But though the reverse were true, God forbid that this should deter me from a firm performance of my duty! or that I, emphatically a servant of the constitution, should betray my trust, in order to skreen myself from danger!

Though, instead of living under the free constitution of this realm, and the mild administration of lord Hardwicke, we were cast upon worse governments, and more slavish times,—yet God forbid that an interpreter of the law should thereby be induced to treat the present like a side-bar motion! or that applying ordinary means to extraordinary occasions, he should freeze the energies of his mind in those cold observances and common forms, on whose fettering power, oppression too frequently, and too successfully relies.

God forbid that in a crisis like the present, though death, or even dishonour were to ensue,—I should withhold my humble, yet strong (though fallible) opinion, that the construction against which I am contending, could not prevail, without endangering the liberties of my country.

I have wandered from my subject; but am not ashamed of the digression.

To return,—I never can assent to an hypothesis (ascribed, perhaps falsely, to a law officer of the crown), which would cast an unmerited imputation on our legislature: which might seem to bring a charge against them, of forging chains for an empire, through mere hurry and inadvertence; and then tardily repairing the mischief they had done,—when one of the king's judges had become the victim of their precipitation.

On the contrary I am bound, by my reverence for parliament, to rescue them from charges which are destitute of foundation; and of which I shall always deny the truth: since if true, they might give birth to a train of zealot rights and duties, so fierce and monstrous, that I, for my part, could not contemplate them without horror.

Nor would any future amendment, such as may have been suggested, disparage parliament, or refute the construction for which I argue. On the contrary, when the legislature makes due provision for giving bail, I shall suppose them to intend, for the first time, to include bailable offences: and when they specifically include misdemeanors unattended with escape, I shall hold it right and consti-

tutional so to do; and that I have been erroneous in deriving any ill effects from such inclusion.

Or if the future statute were declaratory in its nature, I should offer my arguments, my motives, my respect, and my fallibility, as my atonement.

In the mean time, with what strange inconsistency might we tax the legislature, in supposing them regardful of the constitutional rights of one subject, who was to be put to no greater inconvenience, than that of being brought from one county to the next,—and utterly negligent, at the same time, of the privileges of another, who after having been conducted as a prisoner, from one end of Ireland to the other, was then to be hurried beyond sea, to a distant country, a strange tribunal, and a foreign code!

But I have heard it said, that bail may be given in England. That is to say, after dragging a petty offender, from the remotest corner of this country, across the Channel,—he is there permitted to solicit strangers to be responsible for him, of whose character they know nothing.

It was not amongst strangers,—but in the narrow and familiar circle of his connexions and acquaintance, that the great Alfred, the illustrious founder of our law, expected a subject to find sureties for his being amenable to justice.

In the comparatively unimportant case, of a proposed removal from one county to another, we find parliament scrupulously attentive to the principle of law, that if bail can be had, it shall be taken on the *very spot* where the arrest is made; without obliging the accused to set his foot within a gaol,—or even to go to an adjoining county, in which the offence is alleged to have been committed.

Can we imagine that, in the incomparably more momentous case of a proposed removal beyond sea, from one island to another, the same legislature should at once lose sight of the privileges of a subject, charged with a bailable offence?

Why then, in this latter case, does the statute give no authority for taking bail upon the spot,—and without removing the party accused?

I should answer, because in this part of the act, parliament had not bailable offences in contemplation; and therefore such a provision would have been superfluous and impertinent.

I am aware how much “absurdity” has been ascribed to the opinion, which exempts bailable offences from the operation of this section. I know that it has, with respectful irony, been proposed to help the Boeotian intellect of the Irish bench, by a subsidiary clause, enabling our judges to understand plain English; and enacting that the *whole* comprises all the *parts*. I know too that it has been exultingly inquired, how parliament could have conveyed, more explicitly than has



been done, its intention of embracing cases of misdemeanor? The pride of this triumphant question, a simple answer will put down; viz. that by introducing this very word *misdemeanor*, the legislature would have been more explicit, and have done away all doubt.

Meantime agreeably to a construction, by which, in defiance of flippant ridicule, I abide, we may observe that the preamble to the *first* clause, which extends to misdemeanors, adopts an expression, viz. "*offences*," properly enough applicable to inferior transgressions: while that of the *third* section treats of felons and malefactors; and that of the *fourth* of persons guilty, not of offences, but of *crimes*: thus suggesting, that criminal and malefactor are synonymous.

Therefore what is to be done?—For *first*, a man arrested for a bailable offence, must not be exiled from his country, and cast into a foreign prison; under an act which does not order a committal without bail; and in contravention of the letter and spirit of the Habeas Corpus act; which has been justly deemed a modern and supplemental Magna Charta.

But *secondly*, bail cannot be taken *here*. Therefore the constitution must be violated, or the prisoner must be discharged.

But, say the counsel for the Crown, the proper time for bailing is, when the party shall have appeared and pleaded.

Here again the Habeas Corpus act is repealed by implication; and this, not by the makers, but by the interpreters of the law. It is repealed, not by the legislative, but by the judicial power.

A party arrested here, sues out his Habeas Corpus. The return shows him to stand charged with a merely bailable offence; and the act, under which the writ was issued, directs that bail shall be received. But counsel for the Crown produce the 44th of the king; and say, "you cannot be discharged on bail *here*, where you have been apprehended. You must go to England *in close custody*; there to appear and plead; and *possibly* (but very *improbably*) be bailed."

Let him who can, reconcile this doctrine with what judge Blackstone has laid down, 4th Com. 297; that not only to refuse, but to "DELAY to bail any person bailable, is an offence against the liberty of the subject;—

"First, by the common law:—secondly, by the statute of Westminster; and thirdly, by the Habeas Corpus act."

Again, this being a penal act, should receive a strict construction—an exposition in advancement, not restraint of the personal liberty of the subject.

The distinction between penal and remedial statutes, is not so obvious as might at first appear. On the contrary, the same act often partakes of both descriptions; and to different parts of it, different rules of construction will apply.

It is said that this act merely renders persons amenable to justice.

But we have seen, that the construction which I am resisting would do more. It would turn innocence to guilt; and punish, by retrospection, the criminality which it thus created.

Secondly, it may be a hardship to render persons amenable more than once, for substantially one offence;—and amenable to the jurisdiction of that particular tribunal, which the prosecutor shall vexatiously think proper to select.

Thirdly, even supposing the end to be remedial, yet if the means be penal, which the statute has devised for its attainment, the clauses which enact these *means*, should receive a strict construction.

The expense, and irksomeness, and danger, and disgrace, of a long imprisonment, and ignominious removal to a foreign country,—together with the difficulties, and aggravated costs, attending the party's defence of himself there,—are not these, I would ask my brethren, so many penalties?

And if we extend the third and fourth sections to the case of trivial misdemeanors, may not these amercements inflict upon a person ultimately acquitted, a more tedious imprisonment, and heavier fine, than could have ensued upon conviction, if he had been tried at home; so as to leave the absolved wretch nothing better to communicate, to an anxious and afflicted family left behind, than was written by the gallant Francis, after the ruinous defeat at Pavia,—*fors l'honneur tout est perdu*.

Shall we construe these clauses *liberally* (or perhaps I should say *illiberally*), in order that such effects may be let in? Or can we suppose that parliament intended to enact, what appears to have been so obviously calculated to produce them?

It is true that "*ignorantia juris, quod quisque tenetur scire, neminem excusat*."—But the code must be *jus quod teneor scire*; or my unwitting transgression of it is excusable.

Now, what is the code with which I am bound to be acquainted? That of the country which I inhabit. I am bound to know, and to observe the laws, which afford me protection; and to which, in return for that protection, I owe obedience.

If I visit Scotland,—while I am a sojourner there, I shall be presumed to know, and must at my peril disobey, the laws of that country,—to which, in my turn, I can enforce obedience from those who would transgress them, to my injury or disadvantage.

But observe the consequence of maintaining, that by an act done in Ireland, where I am resident, and from which I do not stir, I yet may incur the vengeance of the Scottish law.

I write, and send some letters from Ireland to Scotland; the contents of which are neither libellous nor seditious, according to the law, or adjudged cases in Ireland. The act which I do is, a publication of those writ-



ings; but (as they are not criminal) it is an innocent act, under the only law, which, whilst I continue in Ireland, I am bound to know.

But suppose their import to be defamatory and seditious, by the Scottish law; a code of which I am ignorant; and which hitherto I have not thought it essential to the security of my life or liberty to know.

What *then* will follow, from the construction against which I am contending? The moment the letters are received in that country, they are *there published* by my procurement. A Scottish magistrate issues his warrant; which an Irish justice complaisantly endorses, and executes against me. I am hurried over, in unbailable custody, to Scotland, to be certainly convicted by a *majority* of jurors; and to be transported for an act, which was an innocent one by the laws of the country where it was done.

This privilege of being transported for a misdemeanor, formed no item in the list of advantages which we were promised by the Union.

That constitution would hold *wickedly* incongruous doctrines, which should say, "you shall be punished for transgressing a law which you are not bound to know; and within the sheltering influence of which you do not live."

It would be like holding that a blind man should not be presumed to know that he was on the brink of a precipice; but if he fell and perished, must be considered as *felo de se*; or might be compared to refusing him the benefit of clergy, because he could not read.

Counsel for the Crown indirectly admit the unreasonableness and injustice of such a doctrine.

For the argument which they use, to reconcile the omission (in the 44th of the king) to provide for the party's giving bail where he is arrested, is the ignorance imputed to the magistrates of that district, of the code which the culprit is charged to have transgressed.

But why is this ignorance imputed to them? Because it is not the code under which they live; or, consequently, with which they are bound to be acquainted. Then whence comes the enlightening beam, which while it is denied to the magistrate, illuminates the mind of the supposed offender?

Shall ignorance of the law of England preclude the Irish magistrate from taking bail, for what seems to be no more than a misdemeanor? And shall not the same ignorance protect the Irish subject—from being committed to custody, and dragged out of his country, on a charge of having broken laws, with which he must be presumed to be equally unacquainted?

To return,—while I remain beyond the Scottish territory, I am not *bound* to know its law; and the *presumption* should be, that I am unacquainted with it. Therefore, to hold

me responsible to its provisions, is to make me a wretched and an abject slave; for "*misera est servitus, ubi jus est vagum aut incognitum.*"

Neither would the exemptions for which I am contending, expose Scotland to being inundated with libels of Irish fabric.—For though the *innocent offender* escape, the *offence* will not remain unpunished: nor may it perhaps be here immaterial to remark, that the recital contained in the statute, is not that the *offender*, but the *offence* escapes unpunished.

He who publishes in Scotland, knowingly transgresses a law, with which he is bound to be acquainted. Therefore, consistently with legal principles, and with moral justice, there may be inflicted on *him*, a punishment which will vindicate the law;—deter others from a repetition of the like offence;—and prevent a mischief, which by the way is little likely to occur;—and which though it were, it might be better to endure, than deprive millions of the king's subjects, of their liberties, and constitution.

If the paper which was composed in Ireland, were allowable by its laws, who could lament that this innocent and inadvertent transgression of a foreign code, should remain unpunished?

If, on the other hand, in writing it, the composer transgressed the law of Ireland, he is there answerable, as a freeman should be, *juri sibi cognito*:—and the effect of the construction which I am resisting, is not to obviate an impunity, which need not occur; but to try and punish a man by a law, under which he does not live.

Though these islands be legislatively united they are juridically distinct.

Their statute law differs in many respects: some dissimilarity is, for example, to be found in their criminal code; and especially in that branch of it, which relates to misdemeanors.

But what say those, who maintain a construction, different from mine?

They must say this.

"What we call a libel, you wrote and published (it is true), in Ireland. But by the same act, some copies found their way into England and Scotland. So far as you have been concerned, no doubt the publication was but a single act. But look at it in this multiplying mirror, which we have manufactured out of the 44th of the king, and you will find it reflected into three offences; liable to three punishments; and

Our great revenge has stomach for them all.

Thus you are at least three times as guilty as you could have been before the union.

"You cannot, indeed, in the case of a capital felony, have execution three times done upon you. But, in misdemeanor, the course is clear and easy. It is a common sum in arithmetic. Ascertain what would be an adequate punishment for your offence, and



this, multiplied by three, will give the minimum of penalty, under our construction of the present act.—For example, instead of two years imprisonment, and a fine of 1,000*l.* you shall be imprisoned for six years, and pay 3,000*l.* besides the irksomeness and heavy costs of two long journies, and a voyage beyond sea; together with the expences of the two trials *de incremento*, which the Union, and 44th of the king, will have secured you.

“It is true, that this construction not only repeals the maxim that “*pro eadem causa nemo debet bis vexari*,”—but may operate to punish *misdemeanors* (even where they do not amount to a breach of the peace), by imprisonment for life, and confiscation of all property, real and personal, of the offender. Nay, he may be utterly ruined by an acquittal. But will not this tend to prevent others from offending in the like manner?”

This preventive end is certainly a good one. I should only doubt whether it might not be too dearly purchased, by a surrender of the most valuable birthrights of the subject.

Far from denying the efficacy of this multiplying mirror, I should rather tremble at its power. I should fear that it might operate like those of Archimedes; by quickly and utterly consuming our liberties, and constitution.

Why drag the Irishman, who had never quitted Ireland, to London, for an offence alleged to have been committed by him, constructively present there?

Forsooth, because Ireland is a part of the United Kingdom.

Why try him afterwards in Ireland, and a third time in Scotland, for the same prolific act? feasting each time on his anguish; and sneering at his vain plea of *autrefois acquit*?

Because, for the purpose of oppressing the subject, Ireland has again recovered her distinctness.

The legislature can never have intended this: and we libel parliament, by giving their statute so vexatious a construction.

We will (say such expounders), consider the islands as united, for the purpose of trying you where we please;—and we will consider them as separate, in order to punish you as often, and as exorbitantly as we please.

But to return, at all risks, into Scotland.

An Irishman there, writes to inform a friend here, of a gross insult and injury which he has received;—and inquires what he ought to do in consequence.

The other, less consulting prudence or morality, than passion, false punctilio, and friendly zeal, advises to call to the house of the affronter;—to expostulate, and demand an apology for the insult, and proceed to inflict personal chastisement, if refused.

This is done accordingly;—and the Irishman, apprehended under the endorsed warrant of a Scottish magistrate, is hurried thither, and there is at the least in some danger of being hanged, for the commission of an

accessorial crime, capital by the laws of that country; where he never set his foot, until he went thither to suffer death; for breaking laws which he neither lived under, nor knew; and this by an act, not punishable (or at least—not so heavily penal), in his own country.

Perhaps I have not stated accurately the effect of Scottish law;—of which (God avert the consequences!) I am ignorant enough.

Therefore of the argument which I have just been using, I cannot estimate the force. In fact, in dwelling upon weightier reasons, I have not disdained the transient aid of those of inferior strength. When the liberties of my country seemed sinking in the abyss, to prevent their submersion, I perhaps might catch at straws. But I trust I have been able to lay hold on more solid materials for reliance: and though from a misconception of their statute, the wise intentions of the legislature were frustrated and overwhelmed,—and the constitution of Ireland were to founder with them,—that I have clung to a plank, on which my honour may be saved.

Do I use the language of an advocate?—I trust I do.—But I am concerned for no individual. I am an advocate, exerting myself on behalf of the constitution. Such advocacy is more than the privilege,—it is the duty of a judge;—and the *quiddam honorarium* which I require,—is to have it remembered that, at all risks, I ever shall defend it.

If on the present occasion I support it with becoming warmth—it may be, that I yet retain the excitation of a speech, which did honour even to the eloquence of Mr. Curran; and gave additional lustre to the importance, however transcendant, of the present subject:—a speech, which those would be worse than bad critics, who could mistake for merely brilliant declamation.

But to return to dryer topics.

I cannot consent so to construe a statute, as that it shall impliedly, and by construction, accomplish that, which perhaps the legislature might hesitate to do expressly; viz. not to suspend for a time, and in the case of offences presently dangerous to the state,—but generally, and for ever, to repeal the provisions of the Habeas Corpus act.

We are in the habit of leaning strongly against the doctrine of constructive repeals.—Shall we admit, as an exception to this rule, the propriety of overturning by a side wind, the provisions of the Habeas Corpus act? and displacing, by construction, the corner stone of our constitution?

The most essential proviso of that statute is abrogated here, if the exception of treason and felony, which it contains, be extended to misdemeanors of the most trifling nature:—and the venial offender, though he offer bail, be committed to close custody, and transported beyond sea. I say, though he tender bail:—because, for want of an authority given by the present act, such bail, if tendered, could not be received.



Therefore, as the legislature has not provided that bail shall be taken from the person arrested, at the place of his apprehension, it did not mean to extend this act to the case of bailable offences; and especially not to those unattended with escape:—or secondly, though we should surmise the legislature to have so intended,—we must wait for direct words, before we can effectuate this intention. In the mean time we are not warranted to repeal any law,—and least of all, the Habeas Corpus act and Magna Charta,—by implication.

But it is said that under this act, the offender may give bail in England.

I repeat *first*, that this would not be enough. For, to *delay* receiving bail,—to send the accused a close prisoner beyond sea, to find it amongst strangers,—would be to repeal *pro tanto* the common law,—the statute of Westminster,—and the Habeas Corpus act.

Secondly, perhaps *non constat* that bail could be received in England; although I may be of opinion that it could. At all events (and which is the only material inquiry), the words relied on, as enabling the English magistrate to take bail, do not manifest a legislative intention to include misdemeanors.

For instance;—if the English magistrate had been directed by this statute, to deal with the prisoner (when transmitted) *according to law*:—would it, from such words, be *clear* that the legislature meant to include bailable offences? It certainly would not: and I apprehend that the words made use of, are merely equivalent to those which I have supposed.

Parliament may have meant no more than to prohibit a discharge.—If the words had been that the magistrate should *proceed with the prisoner according to law*, he might have been induced to ask himself this question;—“according to what law is it, that I should proceed? If according to the law, as it stood before the passing of this act, I must discharge the prisoner: for until this statute, I had no authority to detain him. If I am to deal with him according to the law created by the present act, then I do not find it specify what that law is.”

Therefore the legislature, expressing itself more precisely, said that the magistrate, on receiving the transmitted prisoner, should “*proceed with him, as if he had been legally apprehended in England.*”

I am not, however, called upon to prove, that these words might not give authority to bail, if the legislature meant to comprehend bailable offences. It is enough for me, to show that such expressions do not imply an intention to include them; nor rebut the presumption, which *totâ lege inspectâ* will arise, that the statute was not meant to extend to misdemeanors. For though we restrict the operation of the law to felonies, the language adopted will be preferable to the words “*according to law*” (which I have supposed); as

more free from doubt, and more precisely definitive, of the authority which the magistrate is permitted to exert.

But why should we, *contra libertatem*, strain those expressions into evidence of an intention to include misdemeanors, and reject another inference, more deducible from them, and which would at least exclude such as were not accompanied by a real or *quasi* escape?—I have already in a former part of my argument observed, that the words “*as if the person had been legally apprehended in England,*” seem nearly tantamount to these,—*as if he had not withdrawn himself from thence.*

Again, how do the words relied on empower (if they do so), the English magistrate to take bail? No otherwise than by reference to, and recognition of the law of England, that for a misdemeanor, bail shall be taken, where the accused is apprehended. But is not this the law of Ireland also?—And if it be, how can we send judge Johnson a close prisoner to England, under a charge of misdemeanor,—and by virtue of an act, which does not expressly prohibit the admitting him to bail? It is true he cannot be bailed here. But does it follow that he should be transmitted? or may it not rather follow that he ought to be enlarged?

To resume: the Irish Habeas Corpus act is nearly copied from the English. One clause in the latter, does not however (nor its parallel) occur in ours. That clause makes it highly penal to remove a prisoner from England, to Scotland, Ireland, Jersey, Guernsey, Tangier, or any other places beyond the sea. The cause of this omission it may not be easy to ascertain. Perhaps a confidence in the government, founded on the constitutional conduct of his present majesty's illustrious house. Perhaps that the foreign parts which I have mentioned, were dependencies, not of this country, but of England. But let the cause of the omission have been what it may, can we doubt that the spirit of the omitted clause should be considered as pervading the Irish statute?

What then does this section of the English act denote? A constitutional jealousy, entertained by the legislature (or rather by the Commons), and which seems particularly pointed against a practice of conveying persons beyond sea,—which had obtained, in the times immediately preceding this important act.

This clause is the more remarkable, because it follows one, which provides that the Habeas Corpus shall run *into those very islands* of Jersey and Guernsey, to which (so averse were the framers to trips beyond the sea), it is, notwithstanding, forbidden to send any Englishman a prisoner.

The title of the act also shows the same jealousy; which it now seems so much the fashion to lay aside.

It is entitled “An Act for better securing the liberty of the subject; and for *prevention of imprisonments beyond sea.*”



I may here briefly observe, that in the course of the present discussion, three statutes have been repeatedly referred to; viz. the 13th of the King, ch. 31; the 23rd Geo. 2nd, ch. 26; and 24th of the same reign, ch. 55.

As to these acts, I admit *with* the counsel for the crown,—and I *rely on it* against them,—that they were the rudiments of the present statute.

I am also ready to admit, what they farther have insisted, that those acts establish, between the districts of England and Scotland, and counties of Great Britain, the same law, which the present statute has created for the interior of Ireland; and between the British islands.

But if the combined preambles of the 23rd and 24th of Geo. 2nd, be held to differ from the general preamble of the 44th of the King, (which I hold, and have already shown that they do not); then the same law is *not* adopted between the counties of Ireland, by the latter act, as was established between those of Great Britain, by the two preceding.

For *there*, clearly there must have been an escape, or migration, after offence: though whether before or after warrant, became (by the 24th Geo. 2nd) immaterial.

I say there must have been a removal. For the enacting words of the 24th Geo. 2nd, are not *enlarging*. They do not apply generally to “*any person* ;” but only to one, *against whom* “*a warrant shall be issued*.” Thus these latter restrictive words connect the enactments with the preamble; and link both to the statute of the antecedent year.

Now no reason can be assigned for such a difference of law, as should dispense with the necessity of escape between the Irish counties; but should hold it indispensable as between the shires of the adjoining island.

We therefore ought to reject a construction of the 44th of the present King, which introduces so unaccountable, and irrational a distinction.

But with what force (I would ask), do the counsel for the crown cite the acts which I have noticed, by way of refuting my exposition of the one before us?

For no adjudication on the construction of those statutes has been quoted: and until the contrary be shown, I may presume that they have not been so interpreted, as by analogy to extend the present act to Mr. Justice Johnson. For until it be shown, I will not presume that any act has been so construed, as (according to my ideas), to infringe the constitution.

And as to the 13th of the King, which I admit to be the immediate parent of the act in question, how does Blackstone (remarkable for the accuracy of his descriptions), delineate its effects, in 4th Com. 292?

“And now” (says he) “by the statute of the 13th Geo. 3, ch. 31, any warrant for apprehending an English offender, who may have *ESCAPED* into Scotland, or *vice versa*, may be endorsed and executed by the local

magistrates; and the offender conveyed *BACK*,” (observe the expression), “to that part of the United Kingdoms, in which such offence was committed.”

Can a man have *escaped* to a place, in which he has remained from his birth?—or be conveyed *back* to a country, in which he never was before?

Thus Blackstone’s interpretation of the 13th of the King sustains my doctrine, that the 44th applies only to migrations. For the counsel for the crown assert that this is the legitimate offspring of the former; and vehemently insist on its close resemblance to the parent statute.

To return: the enactments of the third and fourth sections are the same; except that the former relates to escapes into Ireland, from Great Britain; and the latter to elopements *vice versa*.

Therefore we cannot construe the fourth clause to authorize the removal to England, of a person arrested here, under the warrant of a British magistrate, for a misdemeanor,—without at the same time holding that the third section will justify the like removal, of one similarly circumstanced—to Ireland.

Will the judges of England be ever induced to concur in this construction?

I pass over the slighter consequences of such an exposition:—for instance, the exile of their greatest men, under the fiat of an Irish trading justice, endorsed by an English magistrate of the like respectable description: the removal of their speaker from the chair,—or their chancellor from the woolsack,—to answer for having by letter animadverted with too much freedom, on the conduct of some not humble, though obscure retainer, of the Irish government.

I advert to no such comparatively insignificant effects as these:—but to that direct repeal of the English Habeas Corpus act, which such a construction of this third section must involve.

Will the English judges so expound the statute now under consideration, as that an inhabitant of England, who is no convicted felon, and has not been charged with any capital offence, shall yet be sent a prisoner to Ireland?—What would those judges think of the promptitude of an officer, who conceived it his duty to refuse the prisoner time to obtain his Habeas Corpus? or in what light would they view the apprehensions of a crown lawyer, that such delay, though conceded to the request of the man in custody, might expose the constable and his assistants to an action of false imprisonment?

That the act under consideration, according to the construction which I reject, operates on individuals, with a rigour disproportionate to their alleged offences, is but an inferior reason against interpreting it so. A more solid and formidable objection is, that so construed, it might be wielded as an instrument of oppression.



We may exult that George the third is on the throne; and that his gracious dispositions are represented by lord Hardwicke; but we are bound to maintain the checks of our well-guarded constitution, against evil times, and arbitrary rulers.

We are therefore not to overlook what appears upon the record: namely, that the present is a sort of state prosecution; for an alleged libel on the executive government of this country.

We are not to forget, that what is contended for by the servants of the crown is, that the Habeas Corpus act shall be ineffectual to procure the enlargement of one, who has incurred their displeasure, by the supposed commission of one of the lowestailable offences: by the publication of what (having no judicial knowledge of its contents) we want the means of pronouncing to be untrue.

We, the legitimate expounders of the *lex terræ*, and especially called on to give efficacy to those laws, which form an entrenchment round the liberties of our country,—are bound to ask ourselves, what motive the servants of the crown might in arbitrary periods have, for ignominiously sending as a prisoner, to another country, a man placed in one of the most dignified situations amongst the magistracy,—whilst as yet his innocence of any crime must be presumed; and when the suffering him to remain at home, so far from producing a failure of justice, would subject him to the jurisdictions of the country, where his offence, if any, was committed: where the merits of his case could be most fairly tried:—where his defence could be most advantageously made;—and his innocence, if he were innocent, most easily made appear:—where amongst friends he could find security, to exempt him from a prison:—where, if acquitted he would be unpunished;—and if convicted, his punishment would be proportionate to his offence.

The answer to these questions, as to the probable motives of a government, in times unlike the present, might guide to a determination of the matter now before us.

Though the topic be a delicate one, I also feel it to be a duty (to which all considerations of mere delicacy should give way), to observe that the prisoner is one of the judges of the land.

With what view do I make this observation?—Shall the judges be less responsible to justice for their conduct, than the most obscure individual of the country?—God forbid!—I am rather disposed to maintain the opposite opinion. But it is to be recollected, that in our frame of government, the judicial order forms a distinct, and sort of *barrier estate*: and that it is a principle of the first importance to our freedom, that this body should be protected from all oppressive control, and jealously removed from all seductive influence, which the executive might be tempted to exert.

The judges stand (at least they may stand), in the breach; and ought manfully to maintain their privileges and independence: less for their own sake, than for that of the constitution. Nor has any thing happened lately\* in this country, which seems calculated to warrant their slumbering on their posts. Therefore, in the moment in which we find a judge the object of this proceeding, it illustrates the abuses to which, ill construed, the statute, at some future period, might give rise.

We should remember that it is of emphatic consequence to the public, that the independence of the bench should exist, not merely in theory, but substantially in practice; and that the Habeas Corpus act (which counsel for the crown by a side wind would overturn), is a barrier erected by the patriotism of our ancestors, against the encroachments of the crown: encroachments as likely to be made, if at all attempted, upon the judges of the land (those impediments to despotic rule), as upon any other order in the state.

On the whole, I consider this as perhaps the most vital question which I have been ever called on to discuss. A more important one, than I ever expected to find submitted to me: a more critical one, than I hope I shall ever have to investigate hereafter.

If the judges reject my construction of this act, I shall bow to their interpretation, as the true one:—and my deference for parliament will prevent me from pronouncing, that so expounded, the statute is oppressive.

But, while the question is yet open, I may avow my opinion, that the provisions, which a construction different from mine must introduce, would tend to shake our liberties and constitution to their foundations.

I admit that they might equally affect the liberties of England. But the proud and enlightened magistrates of that country will, I am persuaded, assert theirs with sufficient boldness.

I for my part confess, that my first anxiety is for the honour, the freedom, and the welfare of my native land.

Indeed the silence with which the event of this arrest has been received, might lead one to infer that I have been exaggerating its importance; and that the transaction is less momentous, than I conceive, or represent it.

But the test afforded by such silence might, in times less fortunate than ours, become highly dangerous and fallacious: and therefore it is unsafe to resort to it at all.

\* This is probably an allusion to the proceedings instituted in the House of Lords by the marquis of Abercorn against Mr. Justice Fox, which were in progress at the time when this argument was delivered. A very full account of the different proceedings in the case of judge Fox will be found in *Hansard's Parliamentary Debates*, Vols. 2 to 7 inclusive. See also 2 *Plowden's Hist. of Ireland from the Union to 1810*, pp. 11, 56, 158, 373.



We cannot have forgotten how profound the silence was, which the *Moniteur* observed on a far different occasion: dissimilar to what, while our laws are rightly construed, can ever disgrace or terrify this country.

I mean the apprehension of the late duke d'Enghien: when he was hurried from a foreign territory into that of France, by the persons exercising the powers of government there,—to be tried by a law with which he was unacquainted,—for a crime alleged to have been committed in a country where he had not been.

The silence *there* may have originated in terror or corruption. But I have already protested against the sophistry of deriving conclusions from the virtues of our sovereign, the merits of the viceroy, or circumstances of the day.

We therefore should, on the contrary, remember, that in this country like causes may produce the like effects; as our history shows them to have done in evil days; which might recur.

If this were ever hereafter to be the case, would not such frightful stillness supply an argument, more impressive and eloquent than words could frame, to prove how alarmingly unconstitutional an occurrence must be, of which the press did not venture to take notice?

I know that some will be, or affect to be, surprised by the tone which I have thought it proper to assume. There may indeed be a tame, and creeping, and tradesman-like mode of administering the law conceived; but it is not one which meets my ideas of the duties or station of a judge. Laws are but means; and though it be not our province to legislate, but to interpret,—yet should we not forget, or fail to further, the end and object of those laws, which we are called upon to construe; namely, the preservation of public morals; the promotion of social order; and the establishment of good government, of our liberties, and of the constitution. Nor would it be possible that any laws, whose direct and obvious tendency was, to overwhelm this latter, could flow from the only source, which should give them force and authenticity; viz. from the true principles and spirit of the constitution.

Therefore I repeat, that where the words of a statute are ambiguous, I shall always hold that so to construe them as to work oppression, is to interpret them falsely.

Besides, the statute which we are expounding, may be considered as in some degree consequential to the Union; a measure which (let me without egotism, be permitted to recollect that), while a member of the legislature, I supported.

If that arrangement, now the law of the land, and as such entitled to our (and especially to my) respect, should, as may happen to the best measures, be abused,—still, so long as I was not an accomplice in them, I should not hold myself responsible for those

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abuses; nor culpable for having unwittingly contributed to produce them, by being party to a league, from which they need not have arisen.

But the united parliament never will enact what, rightly construed, can be subversive of Irish freedom. How therefore can abuses in the statute law spring up, unless through misinterpretations, proceeding from the bench? Or how could I pretend to an unblemished character or tranquil mind, if I were advisedly to lend my hand to a perversion of that compact, which I fondly considered as ensuring the happiness of Ireland,—and in the formation of which I therefore actively concurred? How indeed could I look for pardon from my God, if by (what strikes me as) the forced construction of a corollary statute, I should effect the degradation and enslavement of my country?

No. Let us leave the Habeas Corpus act untouched: the Union on the liberal basis, on which, when carried, it was placed: the constitution in the state, in which our brave ancestors bequeathed it. We are not likely to render our liberties more secure, by alteration. To the rash innovator who attempted it, I should be disposed to exclaim, in the ominous and emphatic language of the Roman Centurion, "*signifer statue signum: hic manebimus optime.*"

These were the observations which I had to make. In entering so far upon the subject to which they apply, I may have wearied my hearers; but I have satisfied my conscience.

Mr. Baron George.—In this case I am of opinion with baron Maclelland. How the motion now before the Court shall be ruled seems to be a matter of great concern to the defendant, and in its discussion many great questions have been introduced: on that account I came this day prepared to deliver my sentiments in some method; but the line of argument I had proposed seems ill-suited to this late hour, I shall therefore offer but very few arguments: I shall pass over the return that has been made to this writ, and the several English acts from which that of the 44th of the King is taken, by saying, that I concur in the observations baron Maclelland has made upon them.

We must observe that the legislature studies to avoid all ambiguity in wording statutes which authorize arrests. Acts which authorize magistrates and constables to commit, or to arrest, do in general show them their duty in plain terms, and so furnish such as intend to act well with an explicit and certain justification; but any statute calling on peace officers to act, and yet leaving it doubtful to them and to others whether they had any authority would be a reproach to legislation.

The counsel for the defendant have argued that the act of the 44th of the King is of this last description, for after denying to it the



extent which it expresses to have, those learned gentlemen are not agreed among themselves what are the classes of crimes, or of offenders which fall within it. At one time it is said, that the Habeas Corpus act is infringed if this act extends beyond capital cases;—next it is said that this act extends to felonies, and unbailable cases only. Again, that if this act extends beyond felonies, it comprises such misdemeanors only as are committed by *actual* and not by *constructive* presence; and that without *escape* no warrant can be endorsed here for an offence committed in England. They have not drawn any line by which they all agree this act is bounded: But, as I think, all this uncertainty arises, from denying to the words of this statute, their plain and express meaning; which seems to have left nothing to construction, and extends, in express terms, to *all* persons against whom a warrant shall be granted for *any* crime or offence.

But much of the weight of the argument has rested on the consideration, that the preamble of this law recites *escape*, and that in the body of the act no power is given to admit to bail in the country where the warrant is to be endorsed; from whence it has been concluded that the act is applicable only to cases where there has been *flight* for an unbailable offence. If this be so then the magistrate who indorsed, and the officer who executed the warrant upon one who did not escape must be answerable in trespass *vi et armis*:—how then shall these persons be informed of the fact on which all their authority is made to rest? How is the fact of escape to be found? How to be certified, or to be proved to them? We cannot fairly intend that the legislature has made all the authority of the magistrate to arise out of a collateral fact of which he can have no official knowledge; and yet compelled him to endorse the warrant when presented to him as the act has required.

This act of the 44th of the King is, as far as the case before us is concerned, a transcript of the 13th of Geo. 3rd; and in my mind the apprehensions here so well expressed for the liberties of the people and of the press, by the possible abuses of this law, lose much of their alarm when it is known that the same provisions in force for thirty years and more, between England and Scotland, have not as yet produced any inconvenience to either of those countries. When the legislatures of the two countries were united, it became necessary that a law similar to that which had till then been in force between England and Scotland should be adopted between Great Britain and Ireland. It seems an obvious and a necessary policy to make every man throughout the united kingdom amenable for any offence against the law of any part of it; and therefore going against the express words of this statute would also be going against its plain intent. It is argued, that had this act been

designed to extend to bailable cases, a power to take bail in the country where the warrant was to be endorsed would be given by it; but, perhaps, authority to admit to bail has been admitted on far different grounds. By the statute each magistrate is empowered to bail for such offences against the laws of his own district as are bailable. The magistrate is supposed to know what offences are bailable within his proper district: How far offences may be bailable by the laws of other countries he knows not; and it might seem to be rash and unreasonable to give judicial power unless competent knowledge was to accompany it; besides, if foreign magistrates knew the duty of such an office, and should be thought to abuse it wantonly and oppressively, the law would be imperfect that left such an evil without remedy; the Court, whose immediate officer he was, having no record before it, or knowledge of the merits, could not judge of his conduct; he must answer, if at all, at a foreign tribunal. The difficulties of estreating, levying, and applying the money forfeited, by recognizance of bail, in such cases have been mentioned. Thus we see what various and voluminous systems of law must arise, had authority to bail been given.

Transmitting the defendant to England, or requiring him to attend there for trial, has been treated as a wanton and an unconstitutional severity; but it appears by the warrant and affidavits now before us, that the libel imputed to him was printed and published in a paper of general circulation, which made its first appearance in London. That such offence may be indicted here also, I doubt not. The injury done by a printed libel may be inflicted in many places; and no doubt a prosecution may be maintained in any of those places: and if this be so, with which party does the choice of a venue rest?—with the sufferer or with the person accused? The persons here charged to be libelled, highly as they value the public opinion in Ireland, may set as high a value on that in England. Besides, they appear to be persons holding highly dignified offices, and may prefer to have the issue on this indictment tried, as near as possible to the seat and observation of that legislature to which they are responsible. The want of compulsory process for witnesses the defendant, no doubt, labours under; but a change of venue might cast this on the prosecutors.

Although to this statute, many faults and imperfections have been imputed, it must be allowed to have one good quality: It is identically and reciprocally the same, with respect to England, Ireland, and Scotland; it is an equal law—it contains nothing that can awaken jealousy—each community of the united kingdom is equally subject to it; and the chief justices of England, and of Ireland, seeming to have the same sense of its provisions, have shown their readiness to give them effect.



For these reasons, with many better already given by baron Maclelland, I concur in opinion with him.

*Lord Chief Baron.*—This case has been so fully and ably discussed as well on the one side as on the other, that very little remains to be said by him who comes last; and to say any thing at all requires no small degree of strength of mind, for before I can apply myself to the subject, I must disengage myself from the effects of that fascinating eloquence which still vibrates upon my ear, has touched, and still acts upon the finest feelings of my heart, and which has renewed some of the pleasantest recollections of my life. And I am not only overpowered by the eloquence which we have heard at the bar; I must also try to deliver myself from the meshes of that net, in which the ingenuity and talents of my brother Smith have involved me; and here I am glad to observe, that though some apprehensions seem to be entertained by him, for the independence of the Irish bench, it is not likely to suffer in its reputation for ability—he alone would be sufficient to avert that danger.

But I confess that he has not convinced me;—either the razor is too keen, or the block too coarse, for me to feel those impressions which his arguments have probably made upon men of finer understandings, and less debilitated constitutions. This question has been greatly magnified by the course which has been taken; one would be led to believe, that the respectable defendant was now at the bar to be tried, upon the charge made against him; but we are not called upon to pronounce either on his guilt or innocence—that is not the question—we are bound until a verdict has been given to consider him as innocent, but we are not to give that verdict. The question before us is, whether a warrant has been granted against him: that appears upon the face of the return; and then all we have to inquire is, whether the Irish justice was warranted in endorsing the warrant of the Chief Justice of England. In my opinion the act is imperative upon him; he had neither the means nor the right to inquire into the guilt or innocence of the party, or into the exility or enormity of the guilt, if any existed,—nor could he inquire, whether the warrant was granted against a person escaping or going into the country in which he receives the warrant; when he sees the warrant, he is bound by law to endorse it. The question before us then merely amounts to this—is the prisoner in custody under a warrant issued by a competent authority in England, and endorsed by a magistrate of competent authority in Ireland? If we take the fourth section of the act 44th Geo. 3, c. 92, and strip it of the tautology into which the legislature has fallen, we shall find the words of the act to be nearly these: “If any person or persons against whom a warrant shall be issued by

“a competent authority, for a crime against the laws of England or Scotland, shall escape, go into, or reside, or be in Ireland; the warrant shall be endorsed by a magistrate, of the place into which he has escaped or gone, or where he resides, or exists, and under the authority of that warrant, he shall be carried to the country from which it issued, and there dealt with, as if he had been there apprehended.”

I seems to me to be impossible to create doubts upon the construction of this clause, without the exercise of that legal subtlety which can turn the plainest words into ambiguity: the enacting words can bear no other construction to any plain mind. Moliere was said to read his comedies to an old woman, as to a person who would best comprehend their obvious force and meaning; and I cannot doubt, that if this act were read to any old woman, she would understand its provisions precisely as I have done.

What then is the objection?—that there is a particular preamble to the enacting clause, which is to receive a different construction from the general preamble, and is to control the generality of the enacting clause, and to confine it to the case of *escape*; but this position I cannot admit to be law—the enacting clause cannot be controlled by the preamble, unless when the enacting clause refers expressly to the preamble, and here there is no such reference. It was an argument of this kind which excited the indignation of lord Cowper, who urged, that upon the construction of the Coventry act, it might with equal force be argued, that inasmuch as it is recited in the preamble to that act, that the cause of passing it, was the slitting of sir J. Coventry's nose; that therefore, the *nose* only was intended to be protected, and that all the other parts and features of the human body might be maimed and disfigured with impunity; for, said an ingenious barrister, the *nose* only is mentioned in the preamble.

But another objection is raised—the statute gives no power of bailing, and therefore it is said, cannot extend to bailable cases. I deny that such a power is withheld by the law; for its very concluding words are, that upon his arrival in the nearest county in England, the person arrested shall be brought before a magistrate, to be dealt with as if arrested there; that is, “shall be bailed, if the charge be bailable,”—if not, shall be transmitted in custody to the place where the offence is charged to have been committed.

It is said, that the preamble of the third section applies also to the fourth part, which uses the words “felons and other malefactors;” but the same words are used in the 13th Geo. 3rd, which clearly extends to misdemeanors; for it directs, that when the person shall be brought from Scotland into England, he shall be taken before a justice, who shall proceed against him, as he might have done by the 24th Geo. 2nd, which regulates the



process between county and county, and provides for the manner of giving bail; from whence I infer, that, notwithstanding the arguments at the bar, the word "malefactors" includes persons charged with bailable offences.

The object of the 13th Geo. 3rd was, to put the criminal process in England and Scotland upon the same footing as it stood between county and county in England by the 24th Geo. 2nd; the 3rd and 4th clauses of the act under discussion are almost precisely the same as the 13th Geo. 3rd, and their object is, to put the process in Great Britain and Ireland upon the same footing as between county and county in England. It is said, that monstrous hardships will follow; and I admit, some curious evils have been pointed out; I am not answerable for them—I am not a law-maker—I am only a law-teller. If I were to speak in a legislative capacity, I might perhaps say, that I was convinced that such a law ought not to have been made without farther provisions; but sitting where I do, and finding the law so made, I must act under its directions.

Besides, all the consequences which have been spoken of with respect to Ireland, will follow with respect to England and Scotland; and, if the people of England have been less tender of the rights of our people than they ought, this act puts it completely in our power to be even with them. If they are alive to the liberties of the country, we are not less so. No man who has heard the display of eloquence and ability which came from the bench this day, can suppose that we are less so: and I will not yield, even to my learned and eloquent brother, in being as feelingly alive to true constitutional liberty, as he or any man. But if the people of England were so alive to the feelings of liberty, how has it happened that they have not, for thirty-two years, repaired, as between England and Scotland, the very mischief which is now said to exist between Great Britain and Ireland? And this is a sufficient answer to the hints thrown out, that this law was framed for any particular purpose; it could not have been so intended:

it had been the law between England and Scotland for above thirty years; and when Ireland came to stand in the same relation to those countries as they bore to each other, it was but just to assimilate the proceedings in the three countries. No such hardships as those suggested, however, arise on the 13th Geo. 3rd; nor has the propriety of that law ever been controverted. As to the opinion, that this act operates as a repeal of the Habeas Corpus act, if it do so, I cannot help it, but I do not think it does; at most, it does but suspend it while a prisoner is *in transitu* from one country to the other: and as to the hardship, if it exist, it is common to the whole empire. The act is an act of fair reciprocity; there is as much hardship in bringing an Englishman, without bail, from the Orkneys to the first northern county in England, or a Scotsman from the Land's-end in Cornwall to the first Scottish county, as in bringing an Irishman from Dublin to Holyhead.

From the weak state of my health, I did not think, when I began to deliver my opinion, that I should have been able to hold out so long; but I must, in mercy to myself, nay, and my audience, conclude;—and, if I have been compelled to omit any of the reasons which have contributed to form my judgment, I trust I shall stand excused, the more especially, as I feel my opinion to be sustained by that of the court of King's-bench, and of two out of three of my brethren.

The defendant subsequently obtained a writ of Habeas Corpus out of the court of Common Pleas, where the case was again argued. The Court deferred giving their decision until the first day of the next ensuing term; and the defendant was admitted to bail in the court of King's-bench.

The decision of the court of Common Pleas was the same as that of the courts of King's-bench and Exchequer; but I have not been able to ascertain whether any difference of opinion subsisted amongst the learned judges.

*Proceedings before the Court of King's Bench in England, in the Case of the King v. the Hon. Mr. Justice Johnson, on the Defendant's Plea to the Jurisdiction of the said Court.*

The Indictment was as follows:

Of Michaelmas Term in the Forty-fifth year of the Reign of King George the Third.

*Middlesex*—BE it remembered that on Friday next after the Octave of Saint Martin in the forty-fifth year of the reign of our sovereign lord George the third by the grace of God of the United Kingdom of Great Britain and Ireland king defender of the faith in the

court of our said lord the king before the king himself at Westminster in the county of Middlesex upon the oath of twelve jurors good and lawful men of the said county of Middlesex now here sworn and charged to inquire for our said lord the king for the body of the same county It is presented as followeth (that is to say) Middlesex (to wit) The jurors for our lord the king upon their oath present that the honorable Robert Johnson late of



Westminster in the county of Middlesex esquire one of the judges of the court of Common Pleas in Ireland unlawfully and maliciously devising and intending to move and incite the liege subjects of our said lord the king to hatred and dislike of our said lord the king's administration of the government of this kingdom and to insinuate and cause it to be believed that the people of that part of the United Kingdom of Great Britain and Ireland called Ireland were oppressed aggrieved and injured by our said lord the king's government of the said part of the said United Kingdom and to traduce defame and vilify the persons employed by our said lord the king in the administration of the government of the said part of the said United Kingdom and especially the right honorable PHILIP EARL OF HARDWICKE our said lord the king's lieutenant general and governor-general of the said part of the said United Kingdom and the right honourable JOHN LORD REDESDALE our said lord the king's lord chancellor and keeper of the great seal and one of his most honourable privy council of and for the said part of the said United Kingdom on the fifth day of November in the forty-fourth year of the reign of our sovereign lord George the third by the grace of God of the United Kingdom of Great Britain and Ireland king defender of the faith at Westminster in the county of Middlesex unlawfully and maliciously did compose write publish and print and cause and procure to be composed written published and printed a certain scandalous and malicious libel in the form of a letter intitled *Affairs of Ireland* containing therein divers scandalous and malicious matters and things of and concerning the said part of the said United Kingdom and the people thereof and our said lord the king's government thereof and also of and concerning the said PHILIP EARL OF HARDWICKE so being such lieutenant and governor as aforesaid and the said JOHN LORD REDESDALE so being such chancellor and privy counsellor as aforesaid and also of and concerning ALEXANDER MARSDEN esquire then and there being one of the under secretaries in the office of the chief secretary of the said PHILIP EARL OF HARDWICKE so being such lieutenant and governor as aforesaid (that is to say) in one part thereof according to the tenor and effect following (that is to say) "*Sir 'Equo ne credite Teucris' was the advice which in a dangerous moment Laocoon gave to the Trojans. It will be remembered that the equus against which the sagacious adviser cautioned his countrymen was a wooden one. His countrymen did not regard Laocoon. They received the wooden representative of wisdom. They approached it as if it possessed authority and power. Its wooden head towered above their houses. But though the machine itself was innoxious wood the credulous Trojans found its hollow head and exalted sides were nothing less than receptacles for greedy speculators and bloody-thirsty assassins. The in-*

*genious author of the story did not mean to confine the lesson which it inculcates to the tale of Troy alone. He meant to take advantage of that easy metaphorical expression which by the common assent of mankind has moulded itself into most languages and by which a certain species of head (which the moderns by various moral experiments have ascertained to be a non-conductor of ideas) has been denominated a wooden head. He meant to caution future nations not to put trust or confidence in the apparent innocence of any such wooden instrument and not to suffer themselves to be led to exalt it into consequence or to pay it any respect. He meant to tell them that any people who submitted to be governed by a wooden head would not find their security in its supposed innoxiousness as its hollowness would soon be occupied by instruments of mischief. When I found Sir this portion of the kingdom" (meaning the said part of the said United Kingdom) "overwhelmed by such consequences to our property as the rapacity of Mr. Marsden" (meaning the said Alexander Marsden) "and his friends and such consequences to our lives as the pikes of Mr. Emmett and his friends have lately produced when I could trace all these evils as the inevitable issue from the head and body of such a government as that of lord Hardwicke" (meaning the said Philip earl of Hardwicke) "and I am told of his innoxiousness and his firmness I still reply the story of the wooden horse and I shall still notwithstanding the fate of Laocoon raise my voice to my countrymen and cry 'Equo ne credite Teucris'. Not Sir that I would be understood literally. I do not mean to assert that the head of my lord Hardwicke" (meaning the said Philip earl of Hardwicke) "is absolutely built of timber my application like that of the original author of the tale is only metaphorical yet at the same time I cannot avoid suspecting that if the head of his excellency" (meaning the said Philip earl of Hardwicke) "were submitted to the analysis of any such investigator of nature as Lavoisier it would be found to contain a superabundant portion of particles of a very ligneous tendency. This Sir is the lord Hardwicke of doctor Addington against whose government 'not a murmur of complaint has been heard' while our property has been subject to the plunder of his clerks and our persons have been exposed to the pikes of the rebels still however the innocence of lord Hardwicke" (meaning the said Philip earl of Hardwicke) "as to any intention of mischief is held forth. But I reply in the words of Mr. Burke 'they who truly mean well must be fearful of acting ill delusive good intention is no excuse for presumption' and I may add in my own words that the government of a harmless man is not therefore a harmless government." And in another part thereof according to the tenor and effect following (that is to say) "Inquiry and research are the duty and the resource of the ignorant and therefore I did inquire. The result of no small attention bestowed in this pursuit was that I discovered of our viceroy" (meaning the said Philip earl of Hardwicke) "that he was in rank*



an earl in manners a gentleman in morals a good father and a kind husband and that he had a good library in St. James's-square Here I should have been for ever stopped if I had not by accident met with one Mr. Lindsay a Scotch parson since become (and I am sure it must be by divine Providence for it would be impossible to account for it by secondary causes) bishop of Killaloe in Ireland—from this Mr. Lindsay I further learned that my lord Hardwicke" (meaning the said Philip earl of Hardwicke) "was celebrated for understanding the modern method of fattening a sheep as well as any man in Cambridgeshire" And in another part thereof according to the tenor and effect following (that is to say) "While I have been writing Sir a map of the West Indies happened to hang before me My eye wandered I know not why upon it and fixed upon one of those little islands which have been lately by the British troops redeemed from the capitulation of lord Cornwallis at Amiens Give me leave to suppose that in the course of a few years one of those little islands should become highly cultivated and that a considerable portion of British property became vested in its land and in its trade suppose that by some unfortunate combination of events this little island should be deeply shaken by insurrection within and should be loudly menaced by invasion from without Suppose a powerful fleet of the enemies of the British name lay to windward ready filled with troops for landing while a desperate band of ruffians were secretly arming in its bosom ready to aid that landing of a foreign enemy suppose in this distress a committee of West India proprietors whose money had been vested in this little island should apply to the doctor Addington for assistance and suppose he were to rise up and desire them to quiet their apprehensions for that he had entrusted the care of their island to a very eminent sheep-feeder from Cambridgeshire who was to be assisted in all his counsels by a very able and strong built chancery pleader from Lincoln's-inn give me leave to ask you Sir who know the city much better than I can pretend to do what would a sugar committee issuing from one of their coffee-houses say to such an answer from a British minister? Why Sir the walls of St. Stephen's and the chambers in Downing-street would be made to ring with their vociferous reproaches and yet Sir to this situation is that portion of the United Kingdom" (meaning the said part of the said United Kingdom) "reduced on the strength and vigour of which at this moment not only its own safety but as I have in my former letter stated the safety of the British empire and consequently I may assume the safety of Europe does entirely depend against the truth of the description I have given of its rulers I may challenge the most daring supporters of the present government to produce me one single act in the lives of either of those truly great characters of the doctor" (meaning the said Philip earl of Hardwicke and John lord Redesdale) "which can entitle them to claim one particle of trust or confidence from the public beyond the bounds

and limits within which I have encircled their exploits On the chancery pleader" (meaning the said John lord Redesdale) "perhaps I may have laid too great a stress he is not of the first consequence though in a future letter I may perhaps point out to you the mischiefs which the intermeddling of such a man in matters out of the course of his practice may occasion but with respect to lord Hardwicke" (meaning the said Philip earl of Hardwicke) "it may be replied that my challenge is unfair because it is impossible to justify his having been appointed to the government of Ireland by any instances of former political ability as the acceptance of his present office was his first political essay What? Is he one of the tribe of the Hobarts Westmorlands and Camdens? Is he one of that tribe who have been sent over to us to be trained up here into politicians as they train the surgeons apprentices in the hospitals by setting them at first to bleed the pauper patients? Is this a time for a continuation of such wanton experiments The gift of lord Hardwicke to us" (meaning thereby the appointment of the said Philip earl of Hardwicke to the said place and office of lieutenant-general and governor-general of the said part of the said United Kingdom) "at such a period cannot be compared to any thing else than the prank of Falstaff upon prince Hal at the battle of Shrewsbury when the knight handed over his pistol to the prince For indeed Sir by the present to us of lord Hardwicke" (meaning the aforesaid appointment of the said Philip earl of Hardwicke) "that sentence has been proved to us in a bloody truth which Falstaff said in a good-humoured jest 'here's what will sack a city'" To the great scandal and disgrace of the said Philip earl of Hardwicke and John lord Redesdale in contempt of our said lord the king and his laws to the evil example of all others in the like case offending and against the peace of our said lord the king his crown and dignity

And the jurors aforesaid upon their oath aforesaid do further present that the said Robert Johnson again unlawfully and maliciously devising and intending as aforesaid and also further unlawfully and maliciously devising and intending to traduce defame and vilify the honorable CHARLES OSBORNE then and there being one of the justices of our said lord the king assigned to hold pleas in the court of our said lord the king before the king himself in Ireland aforesaid afterwards (to wit) on the tenth day of December in the forty-fourth year of the reign of our said lord the king at Westminster in the county of Middlesex unlawfully and maliciously did compose write publish and print and cause and procure to be composed written published and printed a certain other scandalous and malicious libel in some parts of which said last-mentioned libel were and are contained divers scandalous malicious and seditious matters and things of and concerning the said part of the said United Kingdom and the persons employed by our said lord the king in the administration of



the government of the said part of the said United Kingdom and of and concerning the said CHARLES OSBORNE so being such justice as aforesaid and the said ALEXANDER MARSDEN so being such under secretary as aforesaid (that is to say) in one part thereof according to the tenor and effect following (that is to say) "What I have now to touch upon must be done with a delicate hand I will confine myself to a bare narrative of facts and will not presume to give any opinion As soon as the government had fully recovered its recollection a commission directed to five of the judges issued for the trial of those rebels who had been arrested for treason committed in the county and city of Dublin This commission having issued while the judges were on circuit was filled up (and very properly filled up) with the names of five senior of those judges who were then on the circuits which were likely to terminate at the earliest period of time such was the reason given by government for the particular selection of the judges named on that commission and it certainly was a good reason In some time after this commission had been sitting it became necessary to issue a new commission for the trial of rebels in the shires of Antrim and of Down In the appointment of this second commission the principle which directed the selection in the first was not adhered to on the contrary the junior judge of the twelve" (meaning the said Charles Osborne) "was very anxiously called out and placed in this new commission over the heads of a number of his seniors This however could not and ought not to have given offence to any of those senior judges because whatever opinion of them the government" (meaning the persons employed by our said lord the king in the administration of the government of the said part of the said United Kingdom) "may have manifested in such an appointment the opinion of the present government" (meaning the persons employed by our said lord the king in the administration of the government of the said part of the said United Kingdom) "upon such a subject (known to be influenced by motives very different from general justice) is too contemptible to have the slightest effect upon any of those learned judges in the public mind The circumstance therefore was not at first attended to There is published in this city a newspaper called the Dublin Journal It is in general conducted with good sense loyalty and a regard to truth but in particular deviations it is known to be under the control and immediate direction of government" (meaning the persons employed by our said lord the king in the administration of the government of the said part of the said United Kingdom) "In that paper of the 20th of October last a publication appeared which purported to be a charge given by the junior judge above alluded to to the grand jury of the county of Antrim in this place I beg now to declare that I am far from attempting to assert that the learned judge did pronounce any such charge and when I speak of his charge I request you will understand I

mean only the newspaper publication above-mentioned In the newspaper publication the learned judge is made to tell the grand jury that 'through the well-timed efforts and strenuous exertions of a wise and energetic government &c. the progress of such crimes as lately disgraced this country had been effectually checked' If the learned justice did make any such assertion (which I am far from supposing) with what amazement the grand jury must have received such a broadside poured upon the truth of the fact I cannot as I was not present know but I can very well imagine what the feelings of twenty-three well-informed gentlemen must have been Their respect and a thorough knowledge of their duty would necessarily keep them silent" (and in another part thereof according to the tenor and effect following (that is to say) "But Sir suggestion does not stop here Men ask how could (if the learned justice did make any such assertion) the learned justice be led to give credit to a position which contradicts the evidence of the senses of every man in the kingdom who was present at or knew any thing of the transaction how could a learned judge be supposed to assert that which no man in the kingdom would assert unless he had some reasons of the same nature as those which prevailed on Mr. Marsden's attorney-general on the trials for high treason to assert something of the same kind? Men Sir couple the extraordinary selection of the learned justice" (meaning the said Charles Osborne) "from amongst his fellows with the extraordinary assertion attributed to him in a government newspaper and they ask if he made that assertion where did he get his information? Was he ever in Mr. Marsden's (meaning the said Alexander Marsden's) "audience-room since the night of the 23rd of July? what passed there? what were the predisposing causes which induced government to select particularly that learned justice? (meaning the said Charles Osborne) "could government have foreseen (and if so by what faculty) that the learned justice would have given an instruction to the grand jury so very useful and so very grateful to the government? What night telescope could have been applied to the eye of Mr. Marsden" (meaning the said Alexander Marsden) "which through the dark womb of things unborn could have enabled him to perceive through this little future star of praise springing from the creative lips of the learned justice? Here sir decorum towards you and towards the public induces me to be silent as to other and perhaps stronger observations But I may I believe add what men also say that if it were possible the ermined robe of the most awful attribute of his majesty should have been wrapped round the acts of Mr Marsden" (meaning the said Alexander Marsden) "in order to screen them from public disgrace we might then look for another but not less fatal end to our liberties and to our constitution than that which rebellion or invasion could produce and in truth they say that except as to momentary effects rebellion and invasion might be



viewed with indifference if it can be supposed that the stained hands of a petty clerk had been washed in the very fountain of justice" And in other parts of which said last mentioned libel were and are contained divers scandalous and malicious matters and things of and concerning the said JOHN LORD REDESDALE and the conduct of the said JOHN LORD REDESDALE as such chancellor and privy counsellor as aforesaid by way of antithesis and contrast between the conduct which in and by the said last mentioned libel it is insinuated that the said JOHN LORD REDESDALE as such chancellor and privy counsellor as aforesaid had adopted and pursued and the conduct which in and by the said last mentioned libel it is asserted that the late right honourable LLOYD LORD KENYON now deceased would have adopted and pursued (that is to say) in one part thereof according to the tenor and effect following (that is to say) "*instead of calling him*" (meaning the said late Lloyd Lord Kenyon) "*to the high station which he so ably filled had it pleased his majesty to bless the western neighbours of Cambricus*"\* (meaning the people of the said part of the said United Kingdom of Great Britain and Ireland called Ireland) "*who certainly owe the honest and warm-hearted principality*" (meaning the principality of Wales) "*no ill will with Lord Kenyon*" (meaning the said late Lloyd Lord Kenyon) "*for their chancellor I can very well conceive what Lord Kenyon*" (meaning the said late Lloyd Lord Kenyon) "*in such a situation would have done and also what he would not have done From a rare modesty of nature or from a rare precision of self knowledge Lord Kenyon would have acted with reserve and circumspection on his arrival in a country with the moral qualities of the inhabitants of which and with their persons manners and individual characters and connections he must have been utterly unacquainted In such a country torn with domestic sedition and treason threatened with foreign invasion and acting since the union under an untried constitution if doctor Addington had required that Lord Kenyon should direct a Cambridge-shire Earl (meaning the said Philip Earl of Hardwicke) "in all his councils" Lord Kenyon would as soon at the desire of Lord St. Vincent have undertaken to pilot a line of battle ship through the Needles particularly the integrity of Lord Kenyon would have shrunk from such an undertaking if a condition had been added to it that no one nobleman or gentleman who possesses any rank estate or connexion in the country should upon any account be consulted*" (meaning thereby and intending to cause it to be believed that he the said John Lord Redesdale as such chancellor and privy counsellor as aforesaid had undertaken to direct the said Philip Earl of Hardwicke in all his councils as such lieutenant and governor as aforesaid in the government of the said part of the said United Kingdom with a condi-

tion that no one nobleman or gentleman who had possessed any rank estate or connexion in the said part of the said United Kingdom should be consulted as to the government thereof) "*his pride would have spurned at the undertaking if he were told that to the Cambridge-shire Earl*" (meaning the said Philip Earl of Hardwicke) "*and himself in the cares of government a clerk in the secretary's office and a couple of lawyers without political habits political information or honourable connexion were to be joined as assessors and to be the only assessors and Lord Kenyon's pride and integrity would have both joined in preventing him from being himself the instrument of introducing such men into a cabinet of government*" (meaning and insinuating thereby and intending to cause it to be believed that the said John Lord Redesdale as such chancellor and privy counsellor as aforesaid had been the instrument of introducing a clerk in the secretary's office and a couple of lawyers without political habits political information or honourable connexion into the cabinet of the government of the said part of the said United Kingdom) "*If any one man could be found of whom a young but unhappy victim of the justly offended laws of his country had in the moment of his conviction and sentence uttered the following apostrophe 'That viper! whom my father nourished! He it was from whose lips I first imbibed those principles and doctrines which now by their effects drag me to my grate and he it is who is now brought forward as my prosecutor and who by an unheard of exercise of the prerogative has wantonly lashed with a speech to evidence the dying son of his former friend when that dying son had produced no evidence had made no defence but on the contrary had acknowledged the charge and had submitted to his fate' Lord Kenyon would have turned with horror from such a scene in which although guilt was in one part to be punished yet in the whole drama justice was confounded humanity outraged and loyalty insulted Of Lord Kenyon therefore (Cambricus must well know) it never could have been believed that he himself would lead such a character forward introduce him to the favour of a deceived sovereign clothe him in the robes and load him with the emoluments of office Lord Kenyon must have known that a noble duke for having toasted at a drunken club in a common tavern to a noisy rabble "the sovereignty of the people" was struck by his majesty's command out of the privy council and deprived of all his offices both civil and military If therefore any man were to be found who not at a drunken club or to a brawling rabble but in a grave and high assembly not in the character of an inebriated toast-master but in that of a sober constitutional lawyer had insisted on the sovereignty of the people as a first principle of the English law and had declared that by law an appeal lay from the decision of the tellers of the Houses of Parliament to that of "the tellers*

\* See the note in p. 31.

\* See p. 1157 of the preceding volume.



of the nation" and that if a particular law were disagreeable to the people however it might have been enacted with all royal and parliamentary solemnity nevertheless it was not binding and the people by the general law were exempted from obedience to such a particular law because the people were the supreme and ultimate judges of what was for their own benefit Lord Kenyon" (meaning the said late Lloyd Lord Kenyon) "if he had been chancellor in any kingdom in Europe would have shrunk from recommending any such man to the favour of a monarch while there yet remained a shadow of monarchy visible in the world" (meaning and insinuating thereby and intending to cause it to be believed that the said John Lord Redesdale as such chancellor and privy counsellor as aforesaid had recommended a base and disloyal man to the favour of our said lord the king) and in another part thereof according to the tenor and effect following (that is to say) "It was said of lord Kenyon that he loved money if so he loved his own money only and not the money of any other man Lord Kenyon therefore as chancellor never would have made any rule or order by the effects of which the secretary of a master of the Rolls would be deprived of all fees for the purpose of throwing all those fees into the hands of the secretary to the chancellor the better to enable that secretary to discharge the pension of some unknown annuitant on his official profits" (meaning and insinuating thereby and intending to cause it to be believed that the said John Lord Redesdale as such chancellor as aforesaid had wickedly and corruptly made an order by which the secretary of the master of the Rolls of the said part of the said United Kingdom would be deprived of his fees for the purpose of throwing the same fees into the hands of the secretary of himself the said John Lord Redesdale to enable his said secretary to discharge the pension of some person receiving an annuity out of the official profits of his said secretary) and in another part thereof according to the tenor and effect following (that is to say) "the professional pride and the inborn honour of lord Kenyon" (meaning the said late Lloyd Lord Kenyon) "would never have suffered him to enter into a combination to sap by underhand means the independence of his brethren the judges" (meaning and insinuating thereby and intending to cause it to be believed that the said John lord Redesdale as such chancellor as aforesaid had entered into a combination to sap by underhand means the independence of the judges of the said part of the said United Kingdom) "He never would have suffered the great seal in his hands to be used for the purpose of garbling the bench in order to gratify those who might be contented publicly to eulogize that government which privately they must have despised" (meaning and insinuating thereby and intending to cause it to be believed that the said John lord Redesdale as such chancellor as aforesaid had suffered the great seal of the said part of the said United Kingdom to be used for the purpose of

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garbling the bench of judges of the said part of the said United Kingdom in order to gratify those who would publicly eulogize the government of the said part of the said United Kingdom which they must privately have despised) "nor would he have employed any of his leisure in searching into offices for practices by which he might harass the domestic arrangements of others whose pride and whose integrity would not bend to his views and thus double the vigour of his attack by practising on the hopes of some and endeavouring to work upon the fears of others" (meaning and insinuating thereby and intending to cause it to be believed that the said John lord Redesdale had searched into offices for practices by which he might harass the domestic arrangements of other persons whose pride and integrity would not bend to his views) to the great scandal and disgrace of the said PHILIP EARL OF HARDWICKE JOHN LORD REDESDALE and CHARLES OSBORNE in contempt of our said lord the king and his laws to the evil example of all others in the like case offending and against the peace of our said lord the king his crown and dignity.

And the jurors aforesaid upon their oath aforesaid do farther present that the said Robert Johnson again unlawfully maliciously and seditiously devising and intending to move and incite the liege subjects of our said lord the king to hatred and dislike of our said lord the king's administration of the government of the said part of the said United Kingdom and also unlawfully and maliciously devising and intending to traduce defame vilify and bring into public hatred and contempt the said PHILIP EARL OF HARDWICKE so being our said lord the king's lieutenant general and governor general of the said part of the said United Kingdom afterwards to wit on the fifth day of November in the forty-fourth year of the reign of our said lord the king at Westminster in the county of Middlesex unlawfully and maliciously did compose write publish and print and cause and procure to be composed written published and printed a certain other scandalous and malicious libel containing therein divers scandalous and malicious matters and things of and concerning the said part of the said United Kingdom and the people thereof and also of and concerning the said PHILIP EARL OF HARDWICKE so being such lieutenant and governor as aforesaid (that is to say) in one part thereof according to the tenor and effect following (that is to say) "Sir—'Equo ne credite Teucro' was the advice which in a dangerous moment Laocoon gave to the Trojans It will be remembered that the equus against which that sagacious adviser cautioned his countrymen was a wooden one His countrymen did not regard Laocoon They received the wooden representative of wisdom They approached it as if it possessed authority and power Its wooden head towered above their houses but though the machine itself was innoxious wood the credulous Trojans found its hollow head and exalted sides were nothing less



than receptacles for greedy speculators and blood-thirsty assassins. The ingenious author of the story did not mean to confine the lesson which it inculcates to the tale of Troy alone. He meant to take advantage of that easy metaphorical expression which by the common assent of mankind has moulded itself into most languages and by which a certain species of head (which the moderns by various moral experiments have ascertained to be a non-conductor of ideas) has been denominated a wooden head. He meant to caution future nations not to put trust or confidence in the apparent innocence of any such wooden instrument and not to suffer themselves to be led to exalt it into consequence or to pay it any respect. He meant to tell them that any people who submitted to be governed by a wooden head would not find their security in its supposed innoxiousness as its hollowness would soon be occupied by instruments of mischief. When I found sir this portion of the kingdom" (meaning the said part of the said United Kingdom) "overwhelmed by such consequences to our property as the rapacity of Mr. Marsden and his friends and such consequences to our lives as the pikes of Mr. Emmett and his friends have lately produced. When I could trace all these evils as the inevitable issue from the head and body of such a government as that of lord Hardwicke" (meaning the said Philip earl of Hardwicke) "and I am told of his innoxiousness and his firmness I still reply the story of the wooden horse and I shall still notwithstanding the fate of Laocoon raise my voice to my countrymen and cry 'Equo ne credite Teucris'. Not sir that I would be understood literally. I do not mean to assert that the head of my lord Hardwicke" (meaning the said Philip earl of Hardwicke) "is absolutely built of timber. My application like that of the original author of the tale is only metaphorical yet at the same time I cannot avoid suspecting that if the head of his excellency" (meaning the said Philip earl of Hardwicke) "were submitted to the analysis of any such investigator of nature as Lavoisier it would be found to contain a superabundant portion of particles of a very ligneous tendency. This sir is the lord Hardwicke of doctor Addington against whose government 'not a murmur of complaint has been heard' while our property has been subject to the plunder of his clerks and our persons have been exposed to the pikes of the rebels. Still however the innocence of lord Hardwicke" (meaning the said Philip earl of Hardwicke) "as to any intention of mischief is held forth. But I reply in the words of Mr. Burke 'they who truly mean well must be fearful of acting ill. Delusive good intention is no excuse for presumption' and I may add in my own words that the government of a harmless man is not therefore a harmless government." To the great scandal and disgrace of the said Philip Earl of Hardwicke in contempt of our said lord the king and his laws to the evil example of all others in the like case offending and against the peace of our said lord the king his crown and dignity.

And the jurors aforesaid upon their oath aforesaid do farther present that the said Robert Johnson again unlawfully maliciously and seditiously devising and intending as last aforesaid and also farther unlawfully maliciously and seditiously devising and intending to traduce defame and vilify the said John Lord Redesdale so being such chancellor and privy counsellor as aforesaid afterwards to wit on the same day and year last aforesaid at Westminster aforesaid in the county of Middlesex unlawfully and maliciously did compose write publish and print and cause and procure to be composed written published and printed a certain other scandalous and malicious libel containing therein divers scandalous and malicious matters and things of and concerning the said part of the said United Kingdom and the people thereof and also of and concerning the said PHILIP EARL OF HARDWICKE so being such lieutenant and governor as aforesaid and the said JOHN LORD REDESDALE so being such chancellor and privy counsellor as aforesaid (that is to say) in one part thereof according to the tenor and effect following (that is to say) "While I have been writing sir a map of the West Indies happened to hang before me. My eye wandered I know not why upon it and fixed upon one of those little islands which have been lately by the British troops redeemed from the capitulation of lord Cornwallis at Amiens. Give me leave to suppose that in the course of a few years one of those little islands should become highly cultivated and that a considerable portion of British property became vested in its land and in its trade. Suppose that by some unfortunate combination of events this little island should be deeply shaken by insurrection within and should be loudly menaced by invasion from without suppose a powerful fleet of the enemies of the British name lay to windward ready filled with troops for landing while a desperate band of ruffians were secretly arming in its bosom ready to aid that landing of a foreign enemy. Suppose in this distress a committee of West India proprietors whose money has been vested in this little island should apply to the doctor Addington for assistance and suppose he were to rise up and desire them to quiet their apprehensions for that he had entrusted the care of their island to a very eminent sheep-feeder from Cambridgeshire who was to be assisted in all his counsels by a very able and strong-built chancery pleader from Lincoln's-inn give me leave to ask you sir who know the city much better than I can pretend to do what would a sugar committee issuing from one of their coffee-houses say to such an answer from a British minister? Why sir the walls of St. Stephen's and the chambers in Downing-street would be made to ring with their vociferous reproaches and yet sir to this situation is that portion of the United Kingdom" (meaning the said part of the said United Kingdom) "reduced on the strength and vigour of which at this moment not only its own safety but as I have in my former letter stated the safety of the British Empire and consequently



*I may assume the safety of Europe does entirely depend Against the truth of the description I have given of its rulers I may challenge the most daring supporter of the present government to produce me one single act in the lives of either of those 'truly great characters' of the doctor" (meaning the said Philip earl of Hardwicke and John lord Redesdale) "which can entitle them to claim one particle of trust or confidence from the public beyond the bounds and limits within which I have encircled their exploits On the Chancery pleader" (meaning the said John lord Redesdale) "perhaps I may have laid too great a stress—he is not of the first consequence—though in a future letter I may perhaps point out to you the mischiefs which the intermeddling of such a man in matters out of the course of his practice may occasion But with respect to my lord Hardwicke" (meaning the said Philip earl of Hardwicke) "it may be replied that my challenge is unfair because it is impossible to justify his having been appointed to the government of Ireland by any instances of former political ability as the acceptance of his present office was his first political essay What is he one of the tribe of the Hobarts Westmorelands and Camdens? Is he one of that tribe who have been sent over to us to be trained up here into politicians as they train the surgeons apprentices in the hospitals by setting them at first to bleed the pauper patients? Is this a time for a continuation of such wanton experiments? The gift of lord Hardwicke to us" (meaning thereby the appointment of the said Philip earl of Hardwicke to the said place and office of lieutenant-general and governor-general of the said part of the said United Kingdom) "at such a period cannot be compared to any thing else than the prank of Falstaff upon prince Hal at the battle of Shrewsbury when the knight handed over his pistol to the prince For indeed sir by the present to us of lord Hardwicke" (meaning the aforesaid appointment of the said Philip earl of Hardwicke) "that sentence has been proved to us in a bloody truth which Falstaff said in a good humoured jest 'here's what will sack a city'" To the scandal and disgrace of the said PHILIP EARL OF HARDWICKE and JOHN LORD REDESDALE In contempt of our said lord the king and his laws To the evil example of all others in the like case offending and against the peace of our said lord the king his crown and dignity.*

And the jurors aforesaid upon their oath aforesaid do further present that the said Robert Johnson unlawfully and maliciously devising and intending to traduce defame and vilify and to bring into public hatred and contempt the said JOHN lord REDESDALE so being such chancellor and privy councillor as aforesaid afterwards to wit on the tenth day of December in the forty-fourth year of the reign of our said lord the king at Westminster in the county of Middlesex unlawfully and maliciously did compose write publish and print and cause and procure to be composed written published and printed a certain other

scandalous and malicious libel containing therein divers scandalous and malicious matters and things of and concerning the said JOHN lord REDESDALE and the conduct of the said JOHN lord REDESDALE as such chancellor and privy councillor as aforesaid by way of antithesis and contrast between the conduct which in and by the said last-mentioned libel it is insinuated that the said John lord Redesdale as such chancellor and privy councillor as aforesaid had adopted and pursued and the conduct which in and by the said last-mentioned libel it is asserted that the late right honourable Lloyd lord Kenyon now deceased would have adopted and pursued (that is to say) in one part thereof according to the tenor and effect following (that is to say) "Instead of calling him" (meaning the said late Lloyd lord Kenyon) "to the high station which he so ably filled had it pleased his majesty to bless the western neighbours of Cambricus" (meaning the people of the said part of the said United Kingdom) "who certainly owe the honest and warm-hearted principality no ill will with lord Kenyon" (meaning the said late Lloyd lord Kenyon) "for their chancellor I can very well conceive what lord Kenyon" (meaning the said late Lloyd lord Kenyon) in such a situation would have done and also what he would not have done From a rare modesty of nature or from a rare precision of self-knowledge lord Kenyon would have acted with reserve and circumspection on his arrival in a country with the moral qualities of the inhabitants of which and with their persons manners and individual characters and connexions he must have been utterly unacquainted In such a country torn with domestic sedition and treason threatened with foreign invasion and acting since the Union under an untried constitution if doctor Addington had required that lord Kenyon should direct a Cambridgeshire earl" (meaning the said Philip earl of Hardwicke) "in all his councils Lord Kenyon would as soon at the desire of lord St. Vincent have undertaken to pilot a line of battle ship through the Needles Particularly the integrity of lord Kenyon would have shrunk from such an undertaking if a condition had been added to it that no one nobleman or gentleman who possessed any rank estate or connexion in the country should upon any account be consulted His pride would have spurned at the undertaking if he were told that to the Cambridgeshire earl" (meaning the said Philip earl of Hardwicke) "and himself in the cares of government a clerk in the secretary's office and a couple of lawyers without political habits political information or honourable connexion were to be joined as assessors and to be the only assessors And lord Kenyon's pride and integrity would have both joined in preventing him from being himself the instrument of introducing such men into a cabinet of government if any one man could be found of whom a young but unhappy victim of the justly offended laws of his country had in the moment of his conviction and sentence uttered the following apostrophe 'That



‘viper! whom my father nourished! He it was from whose lips I first imbibed those principles and doctrines which now by their effects drag me to my grave and he it is who is now brought forward as my prosecutor and who by an unheard-of exercise of the prerogative has wantonly lashed with a speech to evidence the dying son of his former friend when that dying son had produced no evidence had made no defence but on the contrary had acknowledged the charge and had submitted to his fate’ Lord Kenyon would have turned with horror from such a scene in which although guilt was in one part to be punished yet in the whole drama justice was confounded humanity outraged and loyalty insulted. Of lord Kenyon therefore Cambricus must well know it never could have been believed that he himself would lead such a character forward introduce him to the favour of a deceived sovereign clothe him in the robes and load him with the emoluments of office. Lord Kenyon must have known that a noble duke for having toasted at a drunken club in a common tavern to a noisy rabble ‘the sovereignty of the people’ was struck by his majesty’s command out of the privy council and deprived of all his offices both civil and military. If therefore any man were to be found who not at a drunken club or to a brawling rabble but in a grave and high assembly not in the character of an inebriated toast-master but in that of a sober constitutional lawyer had insisted on the sovereignty of the people as a first principle of the English law and had declared that by law an appeal lay from the decision of the tellers of the Houses of Parliament to that of the ‘tellers of the nation’ and that if a particular law were disagreeable to the people however it might have been enacted with all royal and parliamentary solemnity nevertheless it was not binding and the people by the general law were exempted from obedience to such a particular law because the people were the supreme and ultimate judges of what was for their own benefit. Lord Kenyon if he had been chancellor in any kingdom in Europe would have shrunk from recommending any such man to the favour of a monarch while there yet remained a shadow of monarchy visible in the world” and in another part thereof according to the tenor and effect following (that is to say) “It was said of lord Kenyon that he loved money if so he loved his own money only and not the money of any other man. Lord Kenyon therefore as chancellor never would have made any rule or order by the effects of which the secretary of a master of the rolls would be deprived of all fees for the purpose of throwing all those fees into the hands of the secretary to the chancellor the better to enable that secretary to discharge the pension of some unknown annuitant on his official profits” and in another part thereof according to the tenor and effect following (that is to say) “The professional pride and inborn honour of lord Kenyon” (meaning the said late Lloyd lord Kenyon) “would never have suffered him to enter into a combination to sap by underhand means the in-

dependence of his brethren the judges he never would have suffered the great seal in his hands to be used for the purpose of garbling the bench in order to gratify those who might be contented publicly to eulogize that government which privately they must have despised nor would he have employed any of his leisure in searching into offices for practices by which he might harass the domestic arrangements of others whose pride and whose integrity would not bend to his views and thus double the vigour of his attack by practising on the hopes of some and endeavouring to work upon the fears of others” To the great scandal and disgrace of the said JOHN LORD REDESDALE. In contempt of our said lord the king and his laws to the evil example of all others in the like case offending and against the peace of our said lord the king his crown and dignity

And the jurors aforesaid upon their oath aforesaid do further present that the said Robert Johnson again unlawfully and maliciously devising and intending to traduce defame and vilify the said JOHN lord REDESDALE so being such chancellor as aforesaid afterwards to wit on the same day and year last aforesaid at Westminster aforesaid in the county of Middlesex unlawfully and maliciously did compose write publish and print and cause and procure to be composed written published and printed a certain other scandalous and malicious libel containing therein amongst other things divers scandalous and malicious matters and things of and concerning the said JOHN lord REDESDALE and the conduct of the said JOHN lord REDESDALE as such chancellor by way of antithesis and contrast between the conduct which in and by the said last-mentioned libel it is insinuated that the said John lord Redesdale as such chancellor as aforesaid had adopted and pursued and the conduct which in and by the said last-mentioned libel it is asserted that the said lord Kenyon would have adopted and pursued (that is to say) in one part thereof according to the tenor and effect following (that is to say) “It was said of lord Kenyon that he loved money if so he loved his own money only and not the money of any other man. Lord Kenyon therefore as chancellor never would have made any rule or order by the effects of which the secretary of a master of the Rolls would be deprived of all fees for the purpose of throwing all those fees into the hands of the secretary to the chancellor the better to enable that secretary to discharge the pension of some unknown annuitant on his official profits” (meaning and insinuating thereby and intending to cause it to be believed that the said John lord Redesdale as such chancellor as aforesaid had wickedly and corruptly made an order by which the secretary of the master of the rolls of the said part of the said United Kingdom would be deprived of his fees for the purpose of throwing the same fees into the hands of the secretary of himself the said John lord Redesdale to enable his said secre-



tary to discharge the pension of some person receiving an annuity out of the official profits of his said secretary) and in another part thereof according to the tenor and effect following (that is to say) "*The professional pride and the inborn honour of lord Kenyon*" (meaning the said late Lloyd lord Kenyon) "*would never have suffered him to enter into a combination to sap by underhand means the independence of his brethren the judges*" (meaning and insinuating thereby and intending to cause it to be believed that the said John lord Redesdale as such chancellor as aforesaid had entered into a combination to sap by underhand means the independence of the judges of the said part of the said United Kingdom) "*he never would have suffered the great seal in his hands to be used for the purpose of garbling the bench in order to gratify those who might be contented publicly to eulogize that government which privately they must have despised*" (meaning and insinuating thereby and intending to cause it to be believed that the said John lord Redesdale as such chancellor as aforesaid had suffered the great seal of the said part of the said United Kingdom to be used for the purpose of garbling the bench of judges of the said part of the said United Kingdom in order to gratify those who would publicly eulogize the government of the said part of the said United Kingdom which they must privately have despised) "*nor would he have employed any of his leisure in searching into offices for practices by which he might harass the domestic arrangements of others whose pride and whose integrity would not bend to his views and thus double the vigour of his attack by practising on the hopes of some and endeavouring to work upon the fears of others*" (meaning and insinuating thereby and intending to cause it to be believed that the said John lord Redesdale had searched into offices for practices by which he might harass the domestic arrangements of other persons whose pride and integrity would not bend to his views) to the great scandal and disgrace of the said JOHN LORD REDESDALE in contempt of our said lord the king and his laws to the evil example of all others in the like case offending and against the peace of our said lord the king his crown and dignity.

And the jurors aforesaid upon their oath aforesaid do further present that the said Robert Johnson again unlawfully and maliciously devising and intending to move and incite the liege subjects of our said lord the king to hatred and dislike of our said lord the king's administration of the government of this kingdom and to insinuate and cause it to be believed that the people of that part of the United Kingdom of Great Britain and Ireland called Ireland were oppressed aggrieved and injured by our said lord the king's government of the said part of the said United Kingdom and to traduce defame and vilify the persons employed by our said lord the king in the administration of the government of the said part of the said United Kingdom

and especially the right honourable PHILIP EARL OF HARDWICKE our said lord the king's lieutenant-general and governor-general of the said part of the said United Kingdom and the right honourable JOHN LORD REDESDALE our said lord the king's lord chancellor and keeper of the great seal and one of his most honourable privy council of and for the said part of the said United Kingdom and also further unlawfully and maliciously devising and intending to traduce defame and vilify the honourable CHARLES OSBORNE then and there being one of the justices of our said lord the king assigned to hold pleas in the court of our said lord the king before the king himself in Ireland aforesaid afterwards to wit on the 10th day of December in the forty-fourth year of the reign aforesaid at Westminster in the county of Middlesex unlawfully and maliciously did compose write and publish and cause and procure to be composed written and published a certain other scandalous and malicious libel in some parts of which said last-mentioned libel were and are contained divers scandalous malicious and seditious matters and things of and concerning the said parts of the said United Kingdom and the persons employed by our said lord the king in the administration of the government of the said part of the said United Kingdom and of and concerning the said CHARLES OSBORNE so being such justice as aforesaid and the said ALEXANDER MARDEN so being such under secretary as aforesaid (that is to say) in one part thereof according to the tenor and effect following (that is to say) "*what I have now to touch upon must be done with a delicate hand I will confine myself to a bare narrative of facts and not presume to give my opinion As soon as the government had fully recovered its recollection a commission directed to five of the judges issued for the trial of those rebels who had been arrested for treason committed in the county and city of Dublin This commission having issued while the judges were on circuit was filled up (and very properly filled up) with the names of the five senior of those judges who were then on the circuits which were to terminate at the earliest period of time Such was the reason given by government for the particular selection of the judges named in the commission and it certainly was a good reason In some time after this commission had been sitting it became necessary to issue a new commission for the trial of rebels in the shires of Antrim and of Down In the appointment to this second commission the principle which directed the selection in the first was not adhered to on the contrary the junior judge of the twelve (meaning the said Charles Osborne) was very anxiously called out and placed in this new commission over the heads of a number of his seniors This however could not and ought not to have given offence to any of those senior judges because whatever opinion of them the government (meaning the persons employed by our said lord the*



king in the administration of the government of the said part of the said United Kingdom) may have manifested in such an appointment the opinion of the present government (meaning the persons employed by our said lord the king in the administration of the government of the said part of the said United Kingdom) "upon such a subject (known to be influenced by motives very different from general justice) is too contemptible to have the slightest effect upon any of those learned judges in the public mind. The circumstance therefore was not at first attended to. There is published in this city a newspaper called the *Dublin Journal*. It is in general conducted with good sense loyalty and a regard to truth but in particular deviations it is known to be under the control and immediate direction of the government" (meaning the persons employed by our said lord the king in the administration of the government of the said part of the said United Kingdom) "In that paper of the 20th of October last a publication appeared which purported to be a charge given by the junior judge above alluded to to the grand jury of the county of Antrim. I beg now to declare that I am far from attempting to assert that the learned judge did pronounce any such charge and when I speak of his charge I request you will understand I mean only the newspaper publication above mentioned. In the newspaper publication the learned judge is made to tell the grand jury that 'through the well-timed efforts and strenuous exertions of a wise and energetic government &c. the progress of such crimes as lately disgraced this country had been effectually checked'. If the learned justice did make any such assertion (which I am far from supposing) with what amazement the grand jury must have received such a broadside poured upon the truth of the fact. I cannot as I was not present know but I can very well imagine what the feelings of twenty-three well informed gentlemen must have been. Their respect and a thorough knowledge of their duty would necessarily keep them silent". And in another part thereof according to the tenor and effect following (that is to say) "But sir suggestion does not stop here. Men ask how could (if the learned justice did make any such assertion) the learned justice be led to give credit to a position which contradicts the evidence of the senses of every man in the kingdom who was present at or knew any thing of the transaction? How could a learned judge be supposed to assert that which no man in the kingdom would assert unless he had reasons of the same nature as those which prevailed on Mr. Marsden's attorney-general on the trials for high treason to assert something of the same kind? Men sir couple the extraordinary selection of the learned justice" (meaning the said Charles Osborne) "from amongst his fellows with the extraordinary assertion attributed to him in a government newspaper and they ask if he made that assertion where did he get his information? Was he ever in Mr. Marsden's" (meaning the said Alexander Marsden's) "audience room since the night of the

23rd of July? What passed there? What were the pre-disposing causes which induced government to select particularly that learned justice?" (meaning the said Charles Osborne) "Could government have foreseen (and if so by what faculty) that the learned justice would have given an instruction to the grand jury so very useful and so very grateful to the government? What night telescope could have been applied to the eye of Mr. Marsden" (meaning the said Alexander Marsden) "which through the dark womb of things unborn could have enabled him to perceive this little future star of praise springing from the creative lips of the learned justice? Here sir decorum towards you and towards the public induces me to be silent as to other and perhaps stronger observations. But I may I believe add what men also say that if it were possible the ermined robe of the most awful attribute of majesty should have been wrapped round the acts of Mr. Marsden" (meaning the said Alexander Marsden) "in order to screen them from public disgrace we might then look for another but not less fatal end to our liberties and to our constitution than that which rebellion or invasion could produce and in truth they say that except as to momentary effects rebellion and invasion might be viewed with indifference if it can be supposed that the stained hands of a petty clerk had been washed in the very fountain of justice". And in other parts of which said last-mentioned libel were and are contained divers scandalous and malicious matters and things of and concerning the said JOHN LORD REDESDALE and the conduct of the said JOHN LORD REDESDALE as such chancellor and privy counsellor as aforesaid by way of antithesis and contrast between the conduct which in and by the said last-mentioned libel it is insinuated that the said JOHN LORD REDESDALE as such chancellor and privy counsellor had adopted and pursued and the conduct which in and by the said last-mentioned libel it is asserted that the said late right honorable LLOYD LORD KENYON now deceased would have adopted and pursued (that is to say) in one part thereof according to the tenor and effect following (that is to say) "Instead of calling him" (meaning the said late Lloyd Lord Kenyon) "to the high station which he so ably filled had it pleased his majesty to bless the western neighbours of Cambricus" (meaning the people of the said part of the said United Kingdom of Great Britain and Ireland called Ireland) "who certainly owe the honest and warm hearted principality" (meaning the principality of Wales) "no ill will with lord Kenyon" (meaning the said late Lloyd Lord Kenyon) "for their chancellor I can very well conceive what lord Kenyon" (meaning the said late Lloyd Lord Kenyon) "in such a situation would have done and also what he would not have done. From a rare modesty of nature or from a rare precision of self knowledge lord Kenyon would have acted with reserve and circumspection on his arrival in a country with the moral qualities of the inhabitants of which and with their persons man-



ners and individual characters and connexions he must have been utterly unacquainted In such a country torn with domestic sedition and treason threatened with foreign invasion and acting since the Union under an untried constitution if doctor Addington had required that lord Kenyon should direct a Cambridgeshire earl" (meaning the said Philip earl of Hardwicke) "in all his councils lord Kenyon would as soon at the desire of lord St. Vincent have undertaken to pilot a line of battle ship through the Needles Particularly the integrity of lord Kenyon would have shrunk from such an undertaking if a condition had been added to it that no one nobleman or gentleman who possessed any rank estate or connexion in the country should upon any account be consulted" (meaning and insinuating thereby and intending to cause it to be believed that the said John Lord Redesdale as such chancellor and privy counsellor as aforesaid had undertaken to direct the said Philip earl of Hardwicke in all his counsels as such lieutenant and governor as aforesaid in the government of the said part of the said United Kingdom with a condition that no one nobleman or gentleman who possessed any rank estate or connexion in the said part of the said United Kingdom should be consulted as to the government thereof) "his pride would have spurned at the undertaking if he were told that to the Cambridgeshire earl" (meaning the said Philip earl of Hardwicke) "and himself in the cares of government a clerk in the secretary's office and a couple of lawyers without political habits political information or honourable connexion were to be joined as assessors and to be the only assessors and lord Kenyon's pride and integrity would have both joined in preventing him from being himself the instrument of introducing such men into a cabinet of government" (meaning and insinuating thereby and intending to cause it to be believed that the said John Lord Redesdale as such chancellor and privy counsellor as aforesaid had been the instrument of introducing a clerk in the secretary's office and a couple of lawyers without political habits political information or honourable connexion into the cabinet of the government of the said part of the said United Kingdom) "If any one man could be found of whom a young but unhappy victim of the justly offended laws of his country had in the moment of his conviction and sentence uttered the following apostrophe 'That viper! whom my father nourished! he it was from whose lips I first imbibed those principles and doctrines which now by their effects drag me to my grave and he it is who is now brought forward as my prosecutor and who by an unheard of exercise of the prerogative has wantonly lashed with a speech to evidence the dying son of his former friend when that dying son had produced no evidence had made no defence but on the contrary had acknowledged the charge and had submitted to his fate' Lord Kenyon would have turned with horror from such a scene in which although guilt was

in one part to be punished yet in the whole drama justice was confounded humanity outraged and loyalty insulted Of lord Kenyon therefore (Cambricus must well know) it never could have been believed that he himself would lead such a character forward introduce him to the favors of a deceived sovereign clothe him in the robes and load him with the emoluments of office Lord Kenyon must have known that a noble duke for having toasted at a drunken club in a common tavern to a noisy rabble 'The Sovereignty of the People' was struck by his majesty's command out of the privy council and deprived of all his offices both civil and military If therefore any man were to be found who not at a drunken club or to a brawling rabble but in a grave and high assembly not in the character of an inebriated toast-master but in that of a sober constitutional lawyer had insisted on the sovereignty of the people as a first principle of the English law and had declared that by law an appeal lay from the decision of the tellers of the Houses of Parliament to that of 'the tellers of the nation' and that if a particular law were disagreeable to the people however it might have been enacted with all royal and parliamentary solemnity nevertheless it was not binding and the people by the general law were exempted from obedience to such a particular law because the people were the supreme and ultimate judges of what was for their own benefit lord Kenyon" (meaning the said late Lloyd Lord Kenyon) "if he had been chancellor in any kingdom in Europe would have shrunk from recommending any such man to the favor of a monarch while there yet remained a shadow of monarchy visible in the world" (meaning and insinuating thereby and intending to cause it to be believed that the said John Lord Redesdale as such chancellor and privy counsellor as aforesaid had recommended a base and disloyal man to the favour of our said lord the king) and in another part thereof according to the tenor and effect following (that is to say) "It was said of lord Kenyon that he loved money If so he loved his own money only and not the money of any other man Lord Kenyon therefore as chancellor never would have made any rule or order by the effects of which the secretary of a master of the rolls would be deprived of all fees for the purpose of throwing all those fees into the hands of the secretary to the chancellor the better to enable that secretary to discharge the pension of some unknown annuitant on his official profits" (meaning and insinuating thereby and intending to cause it to be believed that the said John Lord Redesdale as such chancellor as aforesaid had wickedly and corruptly made an order by which the secretary of the master of the rolls of the said part of the United Kingdom would be deprived of his fees for the purpose of throwing the same fees into the hands of the secretary of himself the said John Lord Redesdale to enable his said secretary to discharge the pension of some person receiving an annuity out of the official profits of his said secretary) and in another



part thereof according to the tenor and effect following (that is to say) "*The professional pride and the inborn honour of lord Kenyon*" (meaning the said late Lloyd Lord Kenyon) "*would never have suffered him to enter into a combination to sap by underhand means the independence of his brethren the judges*" (meaning and insinuating thereby and intending to cause it to be believed that the said John Lord Redesdale as such chancellor as aforesaid had entered into a combination to sap by underhand means the independence of the judges of the said part of the said United Kingdom) "*He never would have suffered the great seal in his hands to be used for the purpose of garbling the bench in order to gratify those who might be contented publicly to eulogize that government which privately they must have despised*" (meaning and insinuating thereby and intending to cause it to be believed that the said John Lord Redesdale as such chancellor as aforesaid had suffered the great seal of the said part of the said United Kingdom to be used for the purpose of garbling the bench of judges of the said part of the said United Kingdom in order to gratify those who would publicly eulogize the government of the said part of the said United Kingdom which they must privately have despised) "*nor would he have employed any of his leisure in searching into offices for practices by which he might harass the domestic arrangements of others whose pride and whose integrity would not bend to his views and thus double the vigour of his attack by practising on the hopes of some and endeavouring to work upon the fears of others*" (meaning and insinuating thereby and intending to cause it to be believed that the said John Lord Redesdale had searched into offices for practices by which he might harass the domestic arrangements of other persons whose pride and integrity would not bend to his views) To the great scandal and disgrace of the said PHILIP EARL OF HARDWICKE JOHN LORD REDESDALE and CHARLES OSBORNE In contempt of our said lord the king and his laws To the evil example of all others in the like case offending and against the peace of our said lord the king his crown and dignity

And the jurors aforesaid upon their oath aforesaid do further present that the said Robert Johnson again unlawfully and maliciously devising and intending to traduce defame and vilify the said JOHN LORD REDESDALE so being such chancellor as aforesaid afterwards to wit on the same day and year last aforesaid at Westminster aforesaid in the county of Middlesex unlawfully and maliciously did compose write and publish and cause and procure to be composed written and published a certain other scandalous and malicious libel containing therein among other things divers scandalous and malicious matters and things of and concerning the said JOHN LORD REDESDALE and the conduct of the said John Lord Redesdale as such chancellor as aforesaid by way of antithesis and contrast

between the conduct which in and by the said last mentioned libel it is insinuated that the said JOHN LORD REDESDALE as such chancellor as aforesaid had adopted and pursued and the conduct which in and by the said last-mentioned libel it is asserted that the said LORD KENYON would have adopted and pursued (that is to say) in one part thereof according to the tenor and effect following (that is to say) "*It was said of lord Kenyon that he loved money if so he loved his own money only and not the money of any other man Lord Kenyon therefore as chancellor never would have made any rule or order by the effects of which the secretary of a master of the rolls would be deprived of all fees for the purpose of throwing all those fees into the hands of the secretary to the chancellor the better to enable that secretary to discharge the pension of some unknown annuitant on his official profits*" (meaning and insinuating thereby and intending to cause it to be believed that the said John Lord Redesdale as such chancellor as aforesaid had wickedly and corruptly made an order by which the secretary of the master of the rolls of the said part of the said United Kingdom would be deprived of his fees for the purpose of throwing the same fees into the hands of the secretary of himself the said John Lord Redesdale to enable his said secretary to discharge the pension of some person receiving an annuity out of the official profits of his said secretary) and in another part thereof according to the tenor and effect following (that is to say) "*The professional pride and the inborn honour of lord Kenyon would never have suffered him to enter into a combination to sap by underhand means the independence of his brethren the judges*" (meaning and insinuating thereby and intending to cause it to be believed that the said John Lord Redesdale as such chancellor as aforesaid had entered into a combination to sap by underhand means the independence of the judges of the said part of the said United Kingdom) "*He never would have suffered the great seal in his hands to be used for the purpose of garbling the bench in order to gratify those who might be contented publicly to eulogize that government which privately they must have despised*" (meaning and insinuating thereby and intending to cause it to be believed that the said John Lord Redesdale as such chancellor as aforesaid had suffered the great seal of the said part of the said United Kingdom to be used for the purpose of garbling the bench of judges of the said part of the said United Kingdom in order to gratify those who would publicly eulogize the government of the said part of the said United Kingdom which they must privately have despised) "*nor would he have employed any of his leisure in searching into offices for practices by which he might harass the domestic arrangements of others whose pride and whose integrity would not bend to his views and thus double the vigour of his attack by practising on the hopes of some and endeavouring to work upon the fears of others*" (meaning and insinuating thereby and intend-



ing to cause it to be believed that the said John Lord Redesdale had searched into offices for practices by which he might harass the domestic arrangements of other persons whose pride and integrity would not bend to his views) To the great scandal and disgrace of the said JOHN LORD REDESDALE In contempt of our said lord the king and his laws To the evil example of all others in the like case offending and against the peace of our said lord the king his crown and dignity.

To this indictment the defendant put in the following plea to the jurisdiction of the Court.

\* And now the said Robert Johnson in his own proper person comes, and having heard the indictment aforesaid read, and protesting that he is not guilty of the premises charged in the said indictment, or of any part thereof, for plea nevertheless, saith, that he ought not to be compelled to answer to the said indictment, because he saith that the kingdom of Ireland, before and until the time of the union of the two kingdoms of Great Britain and Ireland was regulated and governed by the proper laws and statutes of the kingdom of Ireland, and not by the laws or statutes of the kingdom of Great Britain, or by the laws or statutes of England; and that ever since the union of the two kingdoms, that part of the said United Kingdom of Great Britain and Ireland called Ireland, hath been and yet is governed and regulated by the proper laws and statutes of that part of the said United Kingdom called Ireland, and not by the laws or statutes of that part of the said United Kingdom called Great Britain or by the laws or statutes of England: and the said Robert Johnson further saith, that in the said kingdom of Ireland, before the said union, and in that part of the said United Kingdom called Ireland since the said union, there always have been and now are courts and jurisdictions therein being and thereto belonging, distinct from the courts and jurisdictions of Great Britain or of England, or of any part thereof, and competent and sufficient for the trial of all offences committed by the natives or inhabitants of Ireland during the time of their respective residence and commorancy in Ireland: and the said Robert Johnson further saith that he was born within Ireland aforesaid, and out of Great Britain, and before the said union (to wit) on the 1st of October, 1752, (to wit) at Westminster, in the county of Middlesex; and that he, the said Robert Johnson, on the first of November, 1802, and thenceforth continually, and until, at, and after the time of presenting the said indictment by the jurors aforesaid, in form

\* These proceedings antecedent to the arguments of counsel on June 29 are taken from 6 East 583.

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aforesaid presented (to wit) until and upon the thirty-first of May, 1805, was resident and commorant within that part of the said United Kingdom called Ireland, and not elsewhere; and that the writings by the said indictment called libels, and in the said indictment mentioned, are of and concerning certain matters and things which took place in Ireland after the said first of November, 1802, (to wit) on the twenty-third of July, 1803, and subsequent thereto; and that the composing, writing, publishing, and printing the said writings, by the said indictment called libels; and causing the same to be composed, written, published, and printed in and by the said indictment alleged and mentioned, and the committing of all the supposed offences therein mentioned, took place and were after the said 1st of November, 1802, and while he the said Robert Johnson was so resident and commorant in Ireland aforesaid, and not elsewhere (to wit) on the 1st of January, 1804, (to wit) at Westminster aforesaid in the county of Middlesex aforesaid; and this he is ready to verify.

To this there was a general demurrer.

And on Tuesday, June 25, 1805, the *Attorney-general* moved the court for a peremptory rule on the defendant to join in demurrer on the morrow; the usual four-day rule to join in demurrer having expired on Saturday the 22nd, and the intervening Monday being a *dies non jurid.* He stated, that the indictment had been found in Michaelmas term last, and no plea put in until this term, when the above plea to the jurisdiction of the court was pleaded as of the last term: and that the object of his motion was to have the demurrer argued on Saturday next, the last crown paper day in the term. That according to the practice on the civil side,\* the plaintiff may enter the joinder in demurrer for the defendant, without giving him any rule to join in demurrer: and though by the rule of court of Trin. 1 Geo. 2nd,† by which that practice is regulated, if there be no joinder in demurrer by the time the rule‡ for pleading is out, the plaintiff may sign judgment, still the practice on the crown side of the court has been, not to enter up judgment without giving a peremptory rule to join in demurrer within such time

\* 2 Tidd's Pract., 649, 2nd edition.

† Rules and orders of K. B., p. 94, edit. of 1735.

‡ By the practice of the Crown-office there are two four-day rules given to bring a defendant in to plead, and then a peremptory rule is moved for, giving, in town prosecutions, the morrow; in country prosecutions, ten days to plead. In subsequent stages of pleading, only one four-day rule is given, and then a peremptory rule moved for, which is in general drawn up for four days more; but in vacation it is considered that such peremptory rule is not necessary.—*East.*

2 C



as the court shall direct. This appears from an ancient book in the Crown-office by sir Simon Harcourt, formerly master of that office, where is this entry:—*Post regulam peremptoriam quatuor dies ad placitandum non de recto sed ex gratia; curia semper existens interrogata quando dies appunctuatur ut curie placet.* And he mentioned as instances of such peremptory rules given, *The King v. Williams*,\* where the attorney-general having demurred to a plea to the jurisdiction, pleaded to an information for a libel; and the defendant being in court, it was insisted that he should join in demurrer *instante*;† but the Court gave two rules for joining in demurrer, and then a peremptory rule; after which they said, if the defendant did not join in demurrer, they would give judgment; and the general practice in this respect, as reported by the same master in *Laver's case*,‡ “That in prosecutions for misdemeanors two four-day rules to plead are given, and a peremptory rule moved for; and then, if there be a demurrer, one four-day rule to join in demurrer is given, and a peremptory rule moved for: but that in capital cases (as that was) there is no rule given either to plead or join in demurrer, the prisoner being obliged in all cases to answer immediately.” He also referred to two other precedents from the Crown-office, the one *Rex v. Ryder*, 8 Geo. 2nd, where, after the common rule was out, a rule was given for the defendant to join in demurrer peremptorily on the morrow: and *Rex v. Broughton*, Trin. 28 Geo. 2nd, where a rule was given on the defendant to join in demurrer on the Friday, and a peremptory rule on the Monday following.

On these precedents, *The Court* now gave the rule required:—“That unless the defendant should peremptorily join in demurrer on the morrow, judgment should be entered for the king.”

\* This was an information for a libel filed in the latter end of the reign of Car. 2, against the defendant, Speaker of the House of Commons, who as such had licensed, by order of the House, the publication of Dangerfield's narrative, on which account he pleaded to the jurisdiction of the court; to which plea the attorney-general demurred; and on the first opening of the case, judgment of *respondeas ouster* was given: and finally the defendant was fined 10,000*l.* E. 2, Jac. 2. Skin. 217, Comb. 18, and Show. 471.—*East.*

† This is said to mean within 24 hours, 1 Tidd's Pract. 508, 3rd edit., which cites *Pryce v. Hodgson*, E. 35 Geo. 3rd. *Sed quære* by whom this account of hours is to be kept? and whether *instante*, as applied to the subject matter, may not more easily be taken to mean before the rising of the Court, where the act is to be done in court? or before the shutting of the office on the same night when the act is to be done there?—*East.*

‡ 6 State Trials, 238; 16 Howell's State Trials, 116.

On Saturday the 29th the demurrer was argued.

Court of King's-bench, Westminster, June 29, 1805.

Mr. Abbott.\*—This, my lords, is an indictment found in this court against the defendant, charging him with having composed, printed, and published, and caused and procured to be composed, printed, and published, several libels (which are set forth in the indictment) reflecting on the lord-lieutenant and the lord chancellor of Ireland and others of his majesty's ministers, the particulars of which it is not necessary to state as the question now before the Court does not turn on them. To this indictment the defendant has pleaded a plea to the jurisdiction of your lordships' court; and his plea, after protesting that he is not guilty of the premises charged on him by the indictment, states that *he ought not to be compelled to answer to this indictment, because the kingdom of Ireland before and until the Union, &c.* [Here the learned counsel read the plea, for which see p. 385.] To this plea there is a demurrer, and then a joinder in demurrer; the question therefore now is, whether this plea is sufficient to oust your lordships' court of its jurisdiction to try this case: and it does seem a little extraordinary that any attempt should be made to prove that this court is not competent to try any person charged with the publication, in the county of Middlesex, of a libel upon his majesty's government—the proposition which it is incumbent on my learned friends who are of counsel for the defendant to make out. In opposition to it I have but little to say, nor can I have much until I hear something from the other side.

My lords, I take it to be one of the essential requisites of a plea to the jurisdiction of a court in which it is pleaded, that it should disclose another court more competent to try the subject matter which it seeks to remove from that court which is already in possession of the case. I find that rule laid down in 1 *Doctrina Placitandi*, p. 234. In Cowp. 172, you will also find the same rule particularly relied upon by lord Mansfield—I refer to the case of *Mostyn v. Fabrigas*, wherein he says, “In every plea to the jurisdiction you must state another jurisdiction; therefore if an action is brought here for a matter arising in Wales, to bar the remedy sought in this court, you must show the jurisdiction of the court of Wales; and in every case, to repel the jurisdiction of the king's court, you must show a more proper and more sufficient jurisdiction: for if there is no other mode of trial, that alone will give the king's courts a jurisdiction.”

\* These arguments of counsel are transcribed from MS. short-hand notes never before published.



Now it is not attempted by this plea to show—and how was it possible to show?—that any other court of England or Ireland had any jurisdiction, to the exclusion of your lordships' court, to try such an offence as that which is charged in this indictment, and which, be it always remembered, is the *publication* of libels in the county of Middlesex. There is in Ireland, I admit, a court competent to try offences committed there, but not to try offences committed in England: there neither is nor can there be any court in that country in which this gentleman can possibly be tried for having published a libel in the county of Middlesex.

My lords, I find in the books—which I have searched with some assiduity—very little on the subject of pleas to jurisdiction; but I think they may be reduced to three classes, and the plea now before the Court will not be found to fall within either of those classes. The first ground, my lords, of a plea to the jurisdiction of a court is the subject matter of the suit; for instance, you may plead to the jurisdiction of a court that land is holden in ancient demesne. A second ground of plea to the jurisdiction of a court is where the matter of the suit arises out of the ordinary limits of the jurisdiction of such court, as in the following instance:—Suppose the case of a city or borough in the charter of which there are clauses directing that the justices of the county shall not interfere in any matters within the said city or borough; and the magistrates of the county within which such city or borough is situate take cognizance of matters within such city or borough, it will be a good plea to the jurisdiction of such a bench of magistrates to state such clause of the charter of such city or borough, and to show that what had happened in such city or borough was within the provisions of its charter. But the present has nothing of that nature about it. The third class of cases, and the only one I can find to which that of the present defendant has any application, comprehends the ordinary instances of the officers of superior courts—such as attorneys and others—who are privileged in their respective courts to a certain extent. Whether it is to be contended by my learned friends on the other side that this gentleman has a personal privilege not to be sued here, I am unable to determine: but something of this sort is I presume to be attempted.

Let us now see how the defendant's case stands as disclosed by his own plea. He there says that he is a native of Ireland; and that before the union of the two countries Ireland was a distinct kingdom, governed by laws of its own, having courts of its own competent to the trial of offences.

My lords, what might have been the case before the Union, when the natives of Ireland were subjects only of the *King* of Great Britain, and not properly speaking subjects of the *Crown* of Great Britain [*Vide* 1 Hale's

P. C. 155, b. 317], it is not necessary for me to discuss; but even under those circumstances I think it would not have been difficult to dispose of such a plea as the present. Since the Union however it is unquestionably clear that every native of Ireland—that every person living in Ireland—is the subject not merely of the *King* but also of the *Crown* of the United Kingdom: and the effect of the Union is such that there is now no difference between the natives of Ireland and the natives of this country as to their duty of obedience to the sovereign, as to their common privileges, or as to their submission to the administration of justice and the protection which they receive from the same. Whatever therefore might have been the effect of a foreigner, resident abroad, sending a libel into this country, to be published here, and of its being so published by his agent here, that is a point which it is unnecessary to argue, because it is not the case of this defendant. For the present is the case of a subject of this realm, sending from one part of the realm to another, a libel to be there published; which, if his plea be true, the defendant has done; and it appears to me that this case is not distinguishable from those cases in which persons have been convicted of conspiracies and other offences where the offence has been commenced in one county and completed in another, for we have had conspiracies carried on in which different acts have been committed in different counties. Let us suppose that a person born at Bristol (which is a city having jurisdiction of its own by charter) and living there should send to his agent a libel to be published in the county of Middlesex; and suppose an indictment were preferred against him for that publication, and the venue laid in the county of Middlesex, which would of course come on to be tried before a local court in the county of Middlesex, would it ever occur to any person in such a case to plead to the jurisdiction of that court, and to state that the defendant was born in Bristol, that at the time of the publication of the supposed libel he resided at Bristol, that at Bristol there is a court competent to the trial of offences committed there, and that therefore the court in Middlesex was not competent to try him? I apprehend it would never occur to any one to offer such a plea to such a charge; and yet, my lords, that case appears to me to be precisely similar to this; the effect of the Union between this country and Ireland being, to put the subjects of both parts of the United Kingdom precisely on the same footing.

The present plea, if it be any thing, is nothing more (as it seems to me) than an *alibi*—an argumentative not guilty. The defendant says, "I cannot be guilty of publishing this libel in the county of Middlesex, for at the time at which I am charged with having published it I was in Ireland;" that is not only no plea but is also a very bad argument; for, where-



ever he was, he did that which was illegal, and he admits that he did that which was illegal; the question is, not *where he was*, but where *he did the act*, or rather *caused it to be done*; and if it be true in point of law that it is impossible for a person residing in Ireland to publish or cause to be published, while he is there resident, a libel in the county of Middlesex, the defendant will have the full benefit of that legal impossibility under the general issue; and in that respect his present plea amounts only to the general issue, and is on that account also bad as a plea to the jurisdiction of the court.

My lords, it is not necessary in this case, nor indeed in many others, that the defendant should be personally present at the place in which the offence is committed; your lordships know that where several parties are charged with a conspiracy, where different acts are done by different parties in different counties, they may all be indicted for the conspiracy in that county in which any one of the acts was done. Although it may be a county in which one of the defendants could prove he never was in his life, he may be convicted of a conspiracy in any county where any one act was done to further the object of that conspiracy, as was the case in *Rex v. Bowes*.\* I do not mean to aver that in that case one of the defendants had never been in the county of Middlesex, but it would have made no difference if it had been so, as some of the conspirators in that case had no active interference whatever in any thing that was done in the county of Middlesex; but they were all convicted of a conspiracy in that county, where some acts were committed in furtherance of the conspiracy. So where false papers, as vouchers for the payment of money, were sent from one part of the kingdom by one man and presented in the county of Middlesex by another, this delivery was held to be sufficient to support an indictment in that county; I refer to the case of the *King v. Brisac*, 4 East, 164; for the indictment in that case stated the fact to have been committed in the county of Middlesex because the vouchers were produced to the officers of government in that county, although these very vouchers were made out on the sea coast in Scotland.

Lord Ellenborough.—In *Shetland*.

Mr. Abbott.—Yes, my lord; and they were transmitted from thence, by a person who was innocent of the fraud, to this county, to be presented here for payment; and they were presented accordingly to the clerks of the public office here. The chief defendant himself had done no act whatever in this county towards effecting that conspiracy, nor did any part of the transaction but the delivery take place in this county. But although the defendants had not themselves done any thing

here, they had caused the act of presenting the vouchers to be done here, which was in effect the same as if they had done it themselves, and that was held sufficient to support an indictment for a conspiracy in the county of Middlesex. For your lordships held that the act of the agent of the conspirators done by their direction in furtherance of their conspiracy was their act, and although the agent was innocent for he thought the vouchers genuine and presented them as such, yet it was a guilty act in the conspirators for they knew they were not genuine.

There is another case, the *King against Munton*,\* a public officer of the island of Antigua. He had transmitted accounts of receipts and expenditures to an agent of his in this country; they were delivered I think at the Custom-house; he himself at the time of their delivery was at Antigua, but on his return to England he was tried, convicted, and received judgment in London; although he was not in London but at Antigua at the time every act was done on which his prosecution was founded. There was another case, just now mentioned to me by my learned friend Mr. Burrough. Some time ago there was a prosecution against a person for a libel on lord Portsmouth, written abroad and received in Lincoln's-in-fields; the person who sent that libel from the continent came here afterwards himself; and he was prosecuted and convicted. That was the case of the *King v. Scilay*.†

Mr. Justice Lawrence.—I do not recollect from what part of the world the libel in that case was sent, it was from some part of the continent.

Mr. Burrough.—I believe from Switzerland; but I am sure it was from some part of the continent.

Lord Ellenborough.—I believe all that appeared in that case as to the place from which it was sent, was the date of the libel; the evidence only went to prove that it was received in Lincoln's-inn-fields.

Mr. Abbott.—Any person may be tried,

\* 1 Esp. N. P. C. 60, 2nd edit.

† I am not aware that this case has ever been reported. Mr. Henry Dealtry, from whom in the progress of this work I have received much valuable assistance, tells me it appears by the proceedings in the Crown-office, that in the month of September 1802 a writ of Certiorari issued to the justices for the county of Middlesex, to remove into the court of King's-bench an indictment found before them against Jean Scilay for sending an anonymous letter to the earl of Portsmouth to extort money from him on pretence of his having committed sodomy with him (Scilay). On December 7th, 1802, Scilay was tried before lord Ellenborough at the sittings for the county of Middlesex, in Westminster-hall, and convicted; and having absconded, he was out-lawed in Trinity vacation following.

\* Cited by Grose, J. in *Rex v. Brisac* and *Scott*, 4 East, 171.



even for a capital offence, in a county in which he never was. As, if a person deliver to an infant or to a lunatic poison to be by that infant or insane person administered to another, which poison is administered in consequence of being so delivered, your lordships very well know, that the person who so delivers the poison originally, is a principal in the murder of him to whom it is administered, although it may be administered in a county in which such person never had been, 1 Hale's P. C. 431. He must *ex necessitate* be considered as present in that county, or go altogether unpunished. The indictment not only may but must be laid in the county where the poison was administered, and it is utterly impossible that it should be otherwise.

My lords, I have but little to add. This case has in another part of the United Kingdom undergone a great deal of discussion; and the topics which are before your lordships this day were there amply and learnedly investigated. I do not find that any of the learned judges had any doubt upon this subject,—at least I have no account of it, but the words of one of them upon that occasion are so apposite that I will read them to your lordships, and then close my address. I allude to the judgment of Mr. Baron Maclelland on the writ of Habeas Corpus in the court of Exchequer of Ireland.

"It has been urged," said that learned person, "by the prisoner's counsel, that the prisoner cannot be tried in England on the indictment, and should, therefore, be now discharged, in as much, say they, as he is not amenable to the laws of England, for an act done there by his influence and procurement, while he resided in Ireland. This position is too absurd to be combated: it would set at nought the principles and ties which bind the two countries together, and would hold out the greatest encouragement to crimes by the impunity it would afford. No authority has been quoted in support of it; and, I conceive, I should ill discharge the duties of my office, if I yielded to the confident assertion of such a principle,—a principle, which, if acted on, would go little short of separating the two countries. I will only say this: that every subject of the empire is bound, by his allegiance to the crown, to obey the laws of the empire; he is bound not to infringe the laws of any part of it, either by actually committing an illegal act, or procuring it to be done in any part of the empire. If he does so, he acts at his peril, and he must answer for it."

If any man, either by his own illegal act or by the act of any other procured by him, does that which is an indictable offence, he is punishable for it by indictment. This gentleman has, during his residence in Ireland, done, or caused and procured to be done, such an act in Middlesex; that is, he has caused

and procured the libel in question to be published in this country, and he must therefore answer for it to the laws of this country. Let him then plead Not Guilty to the charge, and I am confident that every person here will be happy if, in the event of the trial, he shall be able to convince the world that such a publication as we complain of by this indictment did not proceed from him.

Mr. Richardson.—I am to solicit your lordships' attention on behalf of the defendant, and to support this plea. I have observed my learned friend taking a great deal of trouble to establish a proposition, which I have neither interest nor inclination to controvert; namely, that a person resident in one county may cause an act to be done in another; and I admit that there is a physical possibility of this being true of two kingdoms; namely, that a person resident in one kingdom may cause an act to be done in another; but I deny that the same consequences follow in two kingdoms as follow in the case of two counties in the same kingdom. I admit that where a person resident in one county causes an act to be done in another county, he may be punished by indictment in the county where the act is done, being in the same kingdom, because they are then under one and the same law. But where the same principle is applied to two kingdoms, governed by different laws, the case is otherwise; for I submit to your lordships, that to give jurisdiction to a court to punish a man for any act he has done, that act must not only be locally done within the jurisdiction of that court, but it must also be done by a person bound at that time to obey that law by which he is to be punished.

Mr. Justice Lawrence.—What is your proposition?

Mr. Richardson.—That to give jurisdiction to a court to punish a man there must be not only an act cognizable by that Court, but it must be committed by a person bound at the time, to obey the laws which make that act criminal; and I mean humbly to contend before your lordships, that this defendant, being a native of Ireland, resident in his own country, was not at the time when these imputed offences are supposed to have been committed, bound to obey the laws of England.

And, my lords, in order to establish this proposition, I will consider, first, how the matter would have stood, if instead of being an Irishman, this defendant had been a Russian or a Chinese, or the subject of any other foreign state, resident in his native country; and secondly, I will endeavour to show that his being an Irishman makes no difference whatever from the case of any foreigner. Now, my lords, without entering into any theory on the origin of government, I admit that the laws of any particular state have an effective operation, and are binding upon the



subjects of that state. The doctrine more generally received in modern days with respect to the obligation of subjects to obey laws, is that such obligation depends on a contract express or implied between the government and its subjects; that is, between the government and every person who is to be governed, whose conduct is to be regulated and judged of by that law to which by such contract he has assented. If this, which is the received theory at present, be true, no obligation by which a man may be bound to obey the laws of one kingdom can bind him to obey those of another.

Mr. Justice *Lawrence*.—I rather think there is a variety of opinions on that theoretical and speculative question; I mean the question whether government be founded on any supposed contract between the governors and the governed. It is a question on which I believe there is a good deal of difference among the writers of the present day.

Mr. *Richardson*.—I do not mean to entangle your lordships or myself with an inquiry into the grounds of this or any other theory; the result of them all will answer my purpose; namely, that the law of a particular state is a rule of conduct for the subjects of that state only. That the civil law of any particular country is not obligatory on any other country is to be found in the definition of civil law by the highest authority. This is set forth in the Institutes of Justinian (book 1, tit. 2d, § 1,)\* whose words are “*Jus autem civile à jure gentium distinguitur, quòd omnes populi qui legibus et moribus utuntur partim suo proprio partim communi omnium jure utuntur. Nam quod quisque populus ipsi sibi jus constituit, id ipsius proprium civitatis est, vocaturque Jus Civile, quasi Jus Proprium Ipsius Civitatis.*”

My lords, this obligation is binding on the natives of every country, and must bind them for ever; they can never shake it off: but as to those who are not natives, the obligation binds them during the time of their residence alone, and while they are commorant in the country by the laws of which they are protected. The native is invested with all his country's rights at the moment of his birth; as his birth-right he receives the protection of his country when it is most essential to his continuance in being, when he is most helpless and standing most in need of such protection; he therefore never can shake off that native and original obedience to the laws. But there is also a local and a temporary obedience due from persons who voluntarily reside in a country of which they are not natives, who claim the protection of the laws of the state, and who while they receive that protection are bound to pay obedience to such laws, but no longer†. That

doctrine is laid down by Mr. Justice Blackstone, and indeed is so generally received that nobody I believe disputes it. The doctrine itself is laid down most clearly in the first book of the Commentaries of that able writer, chapter 10, p. 370, in which he says that protection and obedience are correlative terms, for without protection there can be no obedience. The words of Mr. Justice Blackstone are “*Local allegiance is such as is due from an alien or stranger born, for so long time as he continues within the king's dominion and protection; and it ceases the instant such stranger transfers himself from this kingdom to another.*”

The same principle is thus expressed by my lord Coke in Calvin's case, 7 Rep. 5, a, “*Protectio trahit subjectionem, et subjectionio protectionem.*”

And, my lords, I say it is not merely the local presence of a man which will make him subject to the laws of a country or bound to obey them, but there must be also a protection received from such laws; otherwise presence alone will not be sufficient. And that appears from the determination in Perkin Warbeck's case mentioned in Calvin's case, 7 Coke, 6, b. That was a case which occurred in the 15 H. 7; and my lord Coke states it in this manner; that Warbeck being an alien, and born in Flanders, pretended to be one of the sons of Edward the Fourth, and invaded the realm with great power with intent to take upon himself the dignity royal, &c. He was taken in war, and it was resolved by the justices that he was not punishable by the common law, but before the constable and marshal who by special commission tried him according to martial law; which I merely state to show that protection is essential to submission in the case of a foreigner, before he can be bound by the law of a state.

Mr. Justice *Lawrence*.—He invaded the country and came with great power and force hostilely.

Mr. *Richardson*.—Yes, my lords; but if the definition of the civil law be just (and it strikes every man's understanding I believe, it certainly strikes mine, as being a just definition), it extends only to the members of a particular state, and not to those of another state during their residence abroad. It is the rule which a state prescribes *ipsi sibi*, to itself and not to others: it is the *Jus proprium ipsius civitatis*,—the law belonging to that very state, and not to any other.

I say, my lords, it follows from these principles, that a foreigner resident out of this country cannot be punished in England for an act done here, though the act may be contrary to the law of England; because he owes no obedience to that law, he not being in England at the time when the act was committed.

I would illustrate this position by a reference to the revenue laws. There are various revenue laws of different foreign states

\* Vide Puffend. L. of N. and N. b. 2, c. 3, s. 23.

† Vide Eost. Cr. L. 185.



as well as of our own; and they have frequently come incidentally under the consideration of our courts—particularly in cases upon policies of insurance; a question has been made whether an English subject ought to pay obedience to the revenue laws of a foreign state; and it has been uniformly held that we are not bound to take notice of any revenue laws of any foreign state, and further that if persons bound to pay obedience to the revenue laws of a foreign state (as for instance the subjects of that state) were to enter into a contract with any subjects of England contrary to such revenue laws of such foreign state, that contract is good in England, and if entered into *bonâ fide* it may be enforced here, although it be in contravention of the revenue laws of the country, the subjects of which are parties to such contract. That doctrine was laid down by lord Mansfield in several cases; I will refer your lordships to only one or two of them. One is *Planché* against *Fletcher*, Doug. 251, and the other *Lever v. Fletcher*, London sittings, Hilary Term, 1780, Park's Insur. 237. Lord Mansfield laid it down broadly, that no country pays any attention to the revenue laws of another.

Lord *Ellenborough*.—That is only that we do not enforce foreign laws of revenue in England: they must have their revenue as they can; but we will not punish the subjects of foreign states for breaches of their revenue laws.

Mr. *Richardson*.—That is, my lords, no country in fact pays any attention to the revenue laws of another state.

My lords, I say if this be a principle recognized in our courts of law, we must of course allow the same indulgence to foreigners with regard to the revenue laws of our own country. Now, my lords, by the revenue laws of England and by our laws for the protection of trade, numerous offences are created, and they who commit them are punishable by the criminal law of England which is thus applied to acts perfectly innocent every where else. To mention one instance out of many, to export wool is by the stat. 13th and 14th Car. 2nd, c. 18, s. 11, declared to be a public nuisance. Now an English subject concerned in the exportation of wool might under this statute be indicted for a misdemeanor; but suppose this exportation is made in consequence of an order received from a Dutchman resident at Amsterdam; in that case, as there are no accessories in misdemeanor, he would unquestionably be a principal; and if he had been an Englishman resident at Yarmouth, and had given that order, though the execution of the order might have taken place in the county of Sussex, he might be indicted for the misdemeanor in Sussex; but, my lords, will it be contended that a Dutchman, who I say owes no obedience to our law, would be answerable for a breach of it? It certainly will not. But it would

be binding on a British subject in whom there is a presumption of knowledge of the law, which by the way is sufficiently severe and sometimes harsh even against the native subjects of a country when its laws become complicated. But still they are offenders against a known law or at least a law presumed to be known; but that rule could not, upon any principle of reason, be said to affect a Dutchman as to whom no such presumption can exist; and if that Dutchman or any other foreigner who had so acted and been instrumental in infringing upon the laws of England should happen afterwards to visit his friends here, would he become subject to arrest and imprisonment for what he had, innocently as to the laws of his own country, done while he was there, unconscious that an act innocent in itself was made criminal by our law? I contend before your lordships that he certainly would not.

But perhaps my learned friend will say, there is a difference between such things as are *mala prohibita* and such as are *mala in se*, for such a distinction does appear to be recognized in some cases. That distinction was recognized in a well known decision by a very learned judge; I allude to the case of *Moliere* in Fost. 128, which was that of a French prisoner of war, who had been indicted for privately stealing in a shop; and Mr. Justice Foster, before whom the case came on to be tried at the assizes, stated to the jury, it would be improper to convict such a person of the capital part of the charge by the law of England which made private stealing in a shop a capital offence, because it was too much to presume that the prisoner knew that to be the law; and he left it to the jury to convict him, not upon the statute, but upon the common law.

Mr. Justice *Grose*.—But how could he be convicted on any thing but the statute which created the offence for which he was indicted?

Lord *Ellenborough*.—How the birth-place of the offender could create any difference in the nature of the offence defined by law, I cannot conceive; nor can any body else, I believe; I hope that case will not be considered as deserving the sanction of the Court; it certainly is not law.

Mr. Justice *Grose*.—That was only the humane decision of a single judge, actuated at the time by his feelings, under singular circumstances; but the law of that decision has never been sanctioned.

Lord *Ellenborough*.—The offence was, privately stealing in a shop; and the circumstance of the prisoner's birth could assuredly make no difference.

Mr. *Richardson*.—I was going to contend, that there could be no such distinction, and that the distinction between *malum in se* and *malum prohibitum* is not a legal,\* but merely a moral

\* Vide *Cannan v. Brice*, 3 B. & A. 133.



distinction. My principle is this; that a foreign subject, resident in his own country, owes no obedience whatever to the municipal laws of another country. I say, the just principle is, that he owes obedience to no laws but those of his own country.

Lord *Ellenborough*.—Except where his actions may contravene the ordinances of his own country, or be hostile to its interests by disturbing or endangering the amity of a foreign power; for that amity may be lost by his disobedience of some of the laws of a foreign state.

Mr. *Richardson*.—It is not necessary for me to inquire how far he may be punishable in his own country for such acts, considered as offences against the duty which he owes to his own state. Possibly there may be such cases by the law of nations, or by some positive and particular provisions of the laws of some foreign states. I am only saying, that, generally speaking, no man owes obedience to the laws of any other country than his own.

Lord *Ellenborough*.—You put the point with perfect distinctness most unquestionably.

Mr. *Richardson*.—I say, my lords, that unless it can be shown, that the laws of all countries punish all acts that are *mala in se* in the same manner, and up to the same extent, it is impossible to say that the subject of one country, even for an act which is *malum in se*, can be amenable to the laws of another. But that is not the case; no, not even in murder, which is certainly as much *malum in se* as any act that can be committed. Suppose all nations had agreed that murder should be punished with a year's imprisonment at least, it would then be a punishment established by the law of nations to that extent, though the laws of particular states might go a great deal farther; and then it would be legal every where to punish a man for murder with one year's imprisonment; but no farther could it be carried against a foreigner. But, my lords, that is clearly not the case; and in every case of criminal inquiry, the subject-matter is considered as punishable, not because it is *malum in se*, but because it is *malum prohibitum*. In prosecutions, the whole course of inquiry, and the whole measure of punishment, are dependent on the law of the state, and every act is considered with reference to the positive institutions of the civil law. But, my lords, states have not agreed on the extent of punishment even of murder itself; if there be such a distinction, even in the case of murder, as considers that crime *malum in se*, and every where punishable as such—

Lord *Ellenborough*.—That is not universally so, certainly; for in some countries, the exposure of infants to wild beasts takes place, and in others human beings are destroyed when they are supposed to be useless, because they are past labour. I do not know of any crime being punished merely on account of its being *malum in se*; if there be any such instance, I am not aware of its existence.

Mr. *Richardson*.—I am humbly contending that there is not; and certainly if there be, libel, which is the offence stated in this indictment, is one to which that principle is the least applicable. The law of libel, especially in England, is matter of positive institution, and embraces a great number of peculiarities, which are not to be found in any law of any other country, nor in any other branch of the law of this country. There is a direct and remarkable distinction in the law of England, as it applies to the case of libel, considered *civilly* and considered *criminally*; namely, that the truth of the matter makes the defendant innocent in the former case; but affords perhaps no mitigation, certainly no justification, in the latter. So clear and so strong is that distinction, that the truth of a libel can never become matter of proof on a criminal charge; but when made the subject of civil inquiry, as where the party injured sues for damages, in consequence of the publication of a libel the case is otherwise; for instance, if I happen to know of a particular felony having been committed by any individual, and I communicate that fact in a letter to a friend, and the person of whom my letter speaks brings an action against me for libel, I may justify the libel, and take upon myself to prove the truth of it. If, on the trial of the issue, it shall be found that what was contained in the alleged libel is true, the defendant will obtain a verdict, and the plaintiff being thus declared to be guilty of the felony, may be committed to take his trial for the same;\* but this takes place only because he has preferred a civil remedy to a criminal prosecution; because if he had proceeded against me by indictment, I should inevitably have incurred the punishment of a libeller; for I should then not be allowed to prove the truth of the allegations of my letter.

Lord *Ellenborough*.—I have heard of that case—the commitment of a plaintiff who brought his action for slander, charging him with felony, where there was a justification, and a verdict given for the defendant; and that the plaintiff was committed for trial for felony on that finding. I say I have heard of such a case, but never knew of one. I never knew of the finding of twelve men against a plaintiff, complaining in a civil suit that he had been charged wrongfully as a felon, being equivalent to finding a bill of indictment. I have heard of the occurrence of cases in which the verdict against such a plaintiff has produced his committal for trial for the felony, the verdict being tantamount to the finding a bill of indictment by a grand jury; but I have never been able to find such case.

Mr. Justice *Grose*.—I remember a case at Bristol, before Mr. Justice Yates, in which a defendant obtained a verdict on a plea of

\* Vide 2 H. P. C. 151; 3 Esp. N. P. C. 134; 4 T. R. 293.



justification charging the plaintiff with being a horse-stealer. Mr. Justice Yates doubted whether he could commit the plaintiff as a horse-stealer; he consulted Mr. Dunning, then recorder of Bristol, when it was held that Mr. Recorder had the proper jurisdiction; and that was the answer which he made to Mr. Justice Yates's question. Nothing took place upon this, because there was a doubt entertained by Mr. Dunning, who claimed the jurisdiction, although Mr. Justice Yates was one of the judges of the court of King's-bench, and had jurisdiction over all England.

Mr. *Richardson*.—There was a case before lord Loughborough, of Harman against Norton, where such a doctrine was, as I understand, admitted; but the plaintiff avoided being committed by retiring from the court.

Lord *Ellenborough*.—I do not believe that any thing has actually occurred, in our time at least, if at any time, that has settled this point. I remember being told, at an early period of my life, that a case of this kind had occurred before Mr. Justice Gould at York, where a man had been tried on a commitment, after a justification upon words calling him a felon, and he had a verdict against him upon an action for slander. The plaintiff in that case was committed for the felony, upon the jury finding a verdict for the defendant upon his justification. But upon inquiry into the truth of the matter, I never could find out that any such case had occurred: I rather think that all such cases are sent before a grand jury. However, that is collateral to the case now in question.

Mr. *Richardson*.—What might be the particular consequence of such a case, it is immaterial to discuss at present; but there is this difference between the criminal and the civil law of England in a technical point of view; that in the one case the truth of the matter complained of may be proved, in the other it cannot.

Lord *Ellenborough*.—You do not state that the criminal common law of England and of Ireland are different in that respect; but I may derange the order in which you intend to proceed. I beg, therefore, that you will pursue your argument according to the course you have laid down for yourself.

Mr. *Richardson*.—If I have been successful in establishing, that a foreigner, while he has no protection under the laws of England, cannot be found guilty of an offence against its revenue laws, it follows, as of course, that he cannot be found guilty of any offence against its libel laws, or indeed against any of its laws, except he should be resident in England. For, he can owe no obedience where he receives no protection: so that, as a foreigner not resident here, none of his actions can be deemed criminal by our law, because he is not bound to obey our law.

I now proceed, my lords, to consider whether there be any difference in this respect be-

tween the case of an Irishman, residing in his native land, and that of any other person who is not subject to the laws of England.

My lords, in Ireland there prevails a system of jurisprudence, consisting of written and unwritten maxims and institutions, which compose, in effect, the same system of jurisprudence as that which prevails in England. They are, in truth, the same written and unwritten maxims, and the same institutions; but that proves no more, than that the system is in force in England as the common law of England, and is in force in Ireland as the common law of Ireland. The circumstance of the two countries having adopted the same principles of jurisprudence, the same maxims and institutions, can make no difference in this case, nor can it have any influence on this question; it is the same thing as if the present defendant, instead of being an Irishman, had been a native of Scotland, in which country we all know a totally different system of law there prevails.

My lords, it is matter of curious, and perhaps difficult historical research, to discover how the present laws of Ireland became its laws. We have high authority for believing that they came originally from England; my lord Coke says, that the laws of England were adopted as the laws of Ireland by the parliament of Ireland (Co. Lit. 141, b.); and he grounds this opinion on two patents of Henry 3rd; the one in the 11th, the other in the 18th year of his reign. In the first of these, king Henry states, that his father, king John, in the 12th year of his reign, went into Ireland, and carried with him "discretos viros, et legis peritos" (discreet and wise men, learned in the laws) "quorum communi concilio et ad instantiam Hibernensium statuit et præcepit leges Anglicanas in Hiberniâ;" and again, in 18 Henry 3rd, it is stated, that king John, "de communi omnium de Hiberniâ consensu," ordained, that Ireland should be governed by the laws of England (Co. Lit. 141, b.)

Lord chief justice Vaughan thinks my lord Coke was mistaken about that (Vaughan, 294), and is of opinion, "that there was no consent of the Irish parliament."

Be that as it may; it is nothing to me whether it was by parliamentary consent, or by any other means, that the laws of England were adopted in Ireland. Perhaps it may have been by the law of conquest, which was then recent, that the common law of England was given to Ireland; for "conquest" (your lordships know) "creates a legitimate right to give law to the conquered in all Christian land;" Calvin's Case, 7 Co. 5a, 17b; where it is laid down, "that if a king come to a Christian kingdom by conquest, he may at his pleasure alter and change the laws of that kingdom; but until he alters those laws, the ancient laws of that kingdom remain." But whether the law of England was given to Ireland by conquest, or accepted by the parliament, which is now matter of historical cu-



riosity, or antiquarian learning, there is no ground or pretence for saying, that the laws of England, *as the laws of England*, are in force in Ireland. They are in force in Ireland as the laws of Ireland; whether by adoption or by conquest, or by use and custom, or by whatever means, no matter; they are in force in Ireland, not because they are the laws of England, but because they are the laws of Ireland.

Then perhaps it may be said, that Ireland continued for a great length of time a subordinate and dependent kingdom. My lords, it was so to a certain extent, and unquestionably the right of legislation for Ireland was exercised by the parliament of England, and afterwards by the parliament of Great Britain; that is to say, by the parliament of England before, and by the parliament of Great Britain after the union between England and Scotland. It was so *de facto*; and while the statute 6 Geo. 1st, c. 5, continued in force, that was the law, at least that was received as the law on this side the water. But it is well known that that law\* was dissented from by the inhabitants of the sister kingdom, and by subsequent acts of parliament was totally changed.

The stat. 6 Geo. c. 5, after reciting the assumption of jurisdiction by the Irish House of Lords to examine and correct the judgments of Irish courts, declares "that the kingdom of Ireland hath been, is, and of right ought to be subordinate unto and dependent upon the imperial crown of Great Britain, as being inseparably united and annexed thereto," and that the British legislature hath power to legislate for the kingdom and people of Ireland; and further declares and enacts that the Irish House of Lords hath not any jurisdiction to affirm or reverse decrees or judgments of any courts in Ireland.

This statute was uneasily borne by the people of Ireland till the year 1782, when by stat. 22nd, Geo. 3rd, c. 53, after reciting that the former statute (stating its title) had been passed, it was enacted that that statute, and the several matters and things therein contained shall be and is and are hereby repealed.†

This method of simply repealing a declaratory statute was not satisfactory to the inhabitants of the other side of the water; and therefore to make the matter more clear, and to render the independence of Ireland complete the 23rd Geo. 3rd, c. 28‡ was passed, for the purpose (as is expressed in the title) of

removing and preventing all doubts which had arisen or might arise concerning the exclusive right of the parliament and courts of Ireland in matters of legislation and judicature and for preventing any writ of error or appeal from any of his majesty's courts in that kingdom from being received, heard, and adjudged in any of his majesty's courts in the kingdom of Great Britain.

This act of parliament being very short I will take the liberty of reading it to your lordships:

"Whereas by an act of the last session of this present parliament (entitled *An Act to repeal an Act made in the sixth Year of the Reign of his late Majesty King George the first, entitled an Act for the better securing the Dependency of the Kingdom of Ireland upon the Crown of Great Britain*) it was enacted, That the said last-mentioned act and all matters and things therein contained should be repealed: and whereas doubts have arisen whether the provisions of the said act are sufficient to secure to the people of Ireland the rights claimed by them to be bound only by laws enacted by his majesty and the parliament of that kingdom in all cases whatever, and to have all actions and suits at law or in equity which may be instituted in that kingdom decided in his majesty's courts therein finally and without appeal from thence: therefore for removing all doubts respecting the same it is declared and enacted that the said right claimed by the people of Ireland to be bound only by laws enacted by his majesty and the parliament of that kingdom in all cases whatever, and to have all actions and suits at law or in equity which may be instituted in that kingdom decided in his majesty's courts therein finally and without appeal from thence, shall be and it is hereby declared to be established and ascertained for ever, and shall at no time hereafter be questioned or questionable."

And by s. 2 no writ of error or appeal from Ireland shall be received or adjudged in any court in England.

My lords, language can hardly be found stronger than that which was used on this occasion, to express the complete independence of the legislature of Ireland on that of Great Britain; for the subjects of Ireland are, to all intents and purposes, to be bound by the legislature of Ireland and not by the legislature of Great Britain; so that here we have two distinct, separate, and independent kingdoms.

The language of this statute was so strong that it might have excited a question, whether the former laws enacted by the parliament of England were not repealed by it; and indeed great alarms were felt in Ireland by persons whose titles to their estates depended on private acts of the British legislature.

Lord Ellenborough.—That produced a quieting act upon the subject.

Mr. Richardson.—It produced an Irish act of parliament in the ensuing session to give validity to such titles.

\* A division took place in the House of Commons on one of the stages of the bill for securing the dependency of Ireland: the numbers were 140 to 83, *Vide* 7 New Parl. Hist. 643.

† Concerning this statute see 22 New Parl. Hist., p. 1241, 1264, 1266; 23 New Parl. Hist., 16, 35, 91.

‡ See 23 New Parl. Hist., 322, 325, 730, 735.



My lords, I say that whatever might have been the law, or whatever doubts might have existed as to what the law was, before the passing of these acts of parliament, it cannot now be questioned that the legislature of Ireland was, at that time, become as independent of the legislature of Great Britain, as that of Scotland was before the union of England with Scotland. Neither can it be a question that the laws of England are in force in Ireland, because they are the laws of Ireland and not because they are the laws of England. And so far from any argument to the contrary arising out of the act of union between Great Britain and Ireland, that I think a very strong confirmation of the doctrine arises out of that act.

My lords, it appears from the manner in which that great political event took place, that the two legislatures treated with each other on terms of the most perfect equality: they severally considered their separate advantages, and they acted for their mutual interest; they agreed like two contracting parties with one another, on terms of independence and equality for their mutual good. By these terms the legislature became one and the same for both, not that the legislature is either English or Irish, for the one is merged as much as the other into a mass compounded of both, called the united parliament of Great Britain and Ireland, by which neither the one country nor the other gives up, on the contrary each retains its laws; and by the eighth article of the Act of Union, it is expressly declared that all laws in force at the time of the Union, and all courts within the respective kingdoms, shall remain as before;—that they shall all remain as by law established at the time of the Union [Here the learned gentleman read the 8th article of the Act of Union].

That the laws of England and those of Ireland have by the Act of Union been kept independent is quite clear. No Englishman will admit that he is subject to the laws of Ireland, nor will any Irishman admit that he is subject to the laws of England, otherwise than as may be hereafter enacted by the united parliament, in which both are represented; for in fact the several laws and statutes of the two countries are studiously and industriously preserved. The Union therefore makes no difference whatever in the question, which is now exactly the same as if it had arisen the year before the Union took place.

My lords, there certainly are some privileges to which an Irishman is entitled and which cannot be claimed by any person who is not a native of the king's dominions. An Irishman is not born out of the pale of allegiance to the king; an Irishman is not an alien or incapable of holding offices of trust under the Crown in this country; he certainly may hold any, although an alien cannot; but that rests upon another principle, and it is the same principle upon which the law of treason rests.

The case of *Calvin* was argued with great superfluity of learning, and by it was decided, that it was not the *country*, but the *personal tie* by which a man was bound to his prince, which constituted allegiance. The object of allegiance is the *person* of the prince, and not his corporate capacity; and therefore if a monarch has several distinct kingdoms subject to him, and they are governed by several and distinct laws, however independent these kingdoms or states may be of each other, there is but one allegiance for them all, and the object of that allegiance is the person of the prince. Treason therefore is an offence solely against the person of the sovereign. But, my lords, we are here upon a question of a mere misdemeanor, in which the laws have studiously preserved a distinction from the crime of treason. There is great difference between the allegiance due to the king, and the obedience due to the laws of any part of his dominions, of which the other parts of his dominions are independent; which distinction is recognized in *Calvin's* case throughout. Allegiance to the king of the united British empire is as much due from a Scotsman as from an Englishman, but no obedience is due from a Scotsman, resident in his native land, to the laws of England. "He that hath abjured the realm, oweth to the king allegiance, who may pardon him, and restore him to his country again, *amittit regnum, sed non regem; amittit patriam, sed non patrem patriæ*; but in the case of a misdemeanor the defendant must be punished because he owed obedience to the law which made this an offence:" and here I submit to your lordships that the defendant owed no such obedience.

But my friend says that it is a principle of law that every plea to the jurisdiction of a court must point out some other court by which the party can be tried; surely he does not by that observation mean any court in England; because I contend that no court whatever here has jurisdiction to try this case. My friend's argument can only apply to cases where the question of jurisdiction arises between different courts of this country, not where the objection extends to all our courts. If a foreigner, on arriving in England, were indicted for having, during his residence abroad, directed the exportation of wool from hence, it would be sufficient for him to plead to the jurisdiction without pointing out any court competent to try him in his own country, for that would be impossible, the act charged not being an offence in any country but England. Suppose, antecedent to the statute of 28 H. 8, for punishing murders committed abroad, a person had been indicted for a murder alleged to have been committed at Paris, would it not have been competent to the defendant in such case, to plead to the jurisdiction of the court, that the offence, if any, was committed where the court had no jurisdiction? The nature of the thing proves that no English court could have tried a man upon such an accusation.



Lord *Ellenborough*.—That is rather too large a proposition; for the court of parliament may try for offences committed in any part of the United Kingdom, as in the case of lord Strafford for treason in Ireland; or within the other dominions of his majesty, such as the East Indies.

Mr. *Richardson*.—That applies to peers of parliament, who are constructively resident in England as advisers of the Crown.

Lord *Ellenborough*.—Mr. Hastings was no peer of parliament: I only state this to show that your proposition is not true to the extent to which you would lay it down as applicable to the present case.

Mr. *Richardson*.—The objection here is, that the offence, if any, is altogether foreign to the law of England—that it is no offence against the law of England. When I state, by this plea, that the act complained of as an offence, is the act of a person who owes no obedience to the law of England, that is a sufficient plea to oust the jurisdiction of the courts of England: this plea states that the person so charged with having committed the act, is amenable only to the law, and triable only by the courts of the country where he was born and where he resided.

My learned friend stated a supposed case of a native of Bristol as analogous to this; but my learned friend, after hearing my argument, and adverting to the principles on which it is founded, will not press that point, for it has no bearing upon the case in the way in which I take it up in argument. I do not set up any local jurisdiction in this kingdom against that of this Court; but I say that the party here charged, is, with reference to the laws of England, to all intents and purposes a foreigner; that, at the time the act is charged to have been committed by him, he owed no obedience whatever to the laws of England; and that therefore he committed no offence for which he can be accountable to the laws of England.

My learned friend stated the case of a conspiracy where the party was indicted, convicted, and punished here, although he himself had done no act in the county where the venue was laid. My lords, these are cases in which no question arises or can arise, as to the jurisdiction of the court, unless the party accused in these cases stood in the situation in which the present defendant stands, namely, the being a native of another country—a foreigner as to the laws of this—the being at the time he is charged with having committed this supposed offence against the laws of England, resident in another and that other his native country.

Mr. Justice *Lawrence*.—The question of the jurisdiction of the court was pressed in the case of the *King v. Brisac & Scott*.

Mr. *Richardson*.—Not in a manner similar to this; for there the defendant pleaded the general issue, and an act in furtherance of his crime was proved to be done in the county of Middlesex.

Mr. Justice *Lawrence*.—There was no question made on the ground of that defendant being a native of a different part of the kingdom.

Mr. *Richardson*.—In that case there was no question similar to the question in the present. It was there only contended that there was no act of conspiracy proved to have been committed in the county of Middlesex; that Brisac being at sea, he could not do any thing in this county; but no question at all was made whether or not that defendant owed obedience to the laws of England.

Mr. Justice *Lawrence*.—Certainly not.

Mr. *Richardson*.—There is no case in which it is held that any foreigner may be made amenable to the laws of England, for a conspiracy to carry any purpose into effect in England, while that foreigner is resident in his own country; and I submit to your lordships, it cannot be, because he owes no obedience to the laws by which that is made an offence.

My lords, the circumstance of the similarity, or even if it were so the identity of the laws of England and Ireland, makes no *real*, although it may make an *apparent* difference in the case; and therefore the force of our objection to the jurisdiction of this court does not at first sight appear to advantage or to be so powerful as it will on closer inspection; or as for instance if the question had arisen between England and Scotland. Suppose that the publication charged by this indictment to be a libel had made its appearance in Edinburgh instead of Westminster; the principle contended for by my learned friend would be the same, but there the party must be tried not by the laws of England but by those of Scotland; and there would be a very different species of punishment in case of conviction.

Lord *Ellenborough*.—I believe deportation.

Mr. *Richardson*.—Yes, my lord. He would be subject to a punishment unknown to the law of England, by the law of a country with which he cannot be supposed to have any acquaintance.

With respect, my lords, to the statement of my learned friend that the subject matter of this plea would be more properly a defence under the general issue, I beg to remind my friend that in the case of the *Kinlochs*\* it was determined that the question of jurisdiction could not be raised upon the general issue.

My lords, the motive of the honourable gentleman, whom I have the honour to represent before your lordships, for taking this course, is not that he dreads the investigation of this subject here or any where; but he thinks,—and I confess, as it appears to me, fairly thinks,—he ought to have the benefit of a trial in the country where he lives, where he is well known and eminently regarded, for

\* Fost. 16 et seq.



he has a number of witnesses as well to his innocence as to the proof of an excellent character who are resident in Ireland where he has long and ably filled an important station. It is not to be doubted, that if it be true that he did compose this publication in Ireland, he might be subject to punishment there, on proof of the fact. I do not deny that the fact, which I say cannot be inquired of in the county of Middlesex, may be inquired of in Ireland, where this gentleman indisputably was during the whole time this indictment states him to have written, composed, and published the supposed libel in question; and although I have a confident hope that if necessary he will establish his innocence, still if found guilty he might be punished in Ireland. But I must not omit to observe, that the course which has been taken, by instituting proceedings here, has subjected him to considerable inconvenience; for at the time when this indictment was exhibited, he had no means of commanding the attendance of witnesses here, nor are there any such means at present. There is I understand a bill\* now before the legislature which is intended to make some provision for that case, of which however we can as yet take no notice; but if he should have a compulsory process for the attendance of such witnesses as he may think necessary to examine to establish his case, nobody can doubt that the expense must be very considerable—of itself a serious punishment, as applied to the case of this honorable gentleman, under all its attendant circumstances,—an expense of itself more burthensome than the effect even of a conviction in his own country; to say nothing of the inconvenience of bringing persons of high station the distance of four hundred miles over sea. I do not mean that the *argumentum ab inconvenienti* is conclusive against the rules of law, but these are the grounds which have induced him to press his objections to a trial here, and to ask your lordships whether he may not have the benefit of a trial in his native country; which, to a person standing in his situation, may be a great benefit for there he will be tried before persons to whom he is well known, and where he can vindicate his character without the expense which this course of proceeding entails upon him, and which to a person of moderate fortune would be absolute ruin. On these grounds I submit our case to your lordships and humbly pray that this plea may be established.

Mr. Abbott† in reply said, that the argument *ab inconvenienti* could not be admitted where the law was clear. That the principal arguments resolved themselves into an objection, that an Irishman was to be considered as an alien with respect to the laws of

England, for which no authority had been or could be cited; for there was no character or privilege belonging to a subject of this country which did not belong to an Irishman, both at home and abroad. Then, if protection and obedience are co-relative, as the defendant has every protection and benefit which the law of England can bestow, he must owe obedience to that law. If an Irishman were libelled by a subject of this country, he would have his redress; but the law of England would not punish an Englishman for libelling a foreigner residing abroad, except so far as it might be considered to be a state-offence in interrupting the harmony between the two countries, if in amity with each other. And this is also a charge of a libel upon the king's administration of government in Ireland. And in answer to the case of the Kinloch's, he observed that Mr. Justice Foster\* was finally of opinion that the prisoners might, if it had been well founded, have availed themselves of the objection to the jurisdiction, on the general plea of Not Guilty.

*Cur. adv. vult.*

*Court of King's-bench, July 1, 1805.*

Lord Ellenborough, C. J.—This is an indictment charging the defendant with the publication of a libel at Westminster in the county of Middlesex; to which the defendant has pleaded that before and since the Union of the kingdoms of Great Britain and Ireland, Ireland had been and yet is governed by its proper statutes and laws, and not by the statutes and laws of England; and that in Ireland there are courts competent for the trial of all offences committed by the natives of Ireland during their residence there. The plea then proceeds to state, that the defendant was born in Ireland, and that the writings, in the indictment called libels, are concerning things which took place in Ireland after the first of November, 1802, whilst he the defendant was resident in Ireland; and concludes to the jurisdiction of the court. To this plea there is a demurrer, and a joinder in demurrer. And in support of the demurrer it is objected that the plea is bad, inasmuch as it does not show any other court where the defendant may be tried for this offence: and that it amounts but to an argumentative plea of Not Guilty. And in support of the objection to the manner in which this plea is framed, the *Doctrina Placitandi*, p. 234, a book of considerable authority on questions of pleading, and also what was said by lord Mansfield in his judgment of the case of *Fabrigas v Mostyn* in Cowper's Reports, 172, have been relied on, "that in every case, to repel the jurisdiction of the king's courts, you must show a more proper and sufficient jurisdiction; for if there be no other mode of trial, that alone will give

\* See the introductory note to the trial at bar p. 413.

† This reply and the judgment of the Court are taken from 6 East, 596.

\* Cr. L. 23.



the king's courts a jurisdiction." And as to this, there can be no question but that such is the general form of pleading in civil suits. And in the pleas to the jurisdiction of this court, in the cases of Eliot, Holles, and Valentine, against whom an information was exhibited by the attorney general in K. B. in the reign of Car. 1, for words alleged to have been seditiously spoken in the House of Commons, there is an averment that the offences, if any, were committed in parliament and ought to be *there* tried and determined, *Vide Tremaine*, 298. So in the case of the *Kinlochs*, Foster 17, which was referred to in the argument, where it was charged in the indictment that the offence was committed at Fochabers, in Scotland; the prisoners in their plea to the jurisdiction of the court of Oyer and Terminer stated, that the offence with which they were charged was triable in the court of Justiciary, or in some courts, or before other justices in Scotland.

The necessity of thus pleading in general was not controverted by the defendant's counsel; he, however, endeavoured to support the plea by saying, that the objection to the indictment being the *total* want of any jurisdiction in this part of the United Kingdom to try the defendant at all, it was impossible and unnecessary to state such other court or place of trial. This admission, in our opinion, clearly goes to show that this plea is bad; for if that cannot be done in this case, which is required to be done in all pleas to the jurisdiction, the consequence will be, that the matter of this plea is not proper to oust this court of its jurisdiction to try an offence committed in the county where it sits, but is matter to be taken advantage of either by plea in bar, or by evidence on the plea of Not Guilty. It will be recollected that the plea in question admits the commission of that crime which is charged in the indictment to have been committed in the city of Westminster; and the proposition which the defendant's counsel has contended for is in effect this:—Admitting the defendant to have committed a crime as to the laws of England in the county of Middlesex, I still insist that he is not punishable for it by any court of this part of the United Kingdom; though I cannot show that he is punishable by any other. The stating of such a proposition carries, almost on the face of it, its own refutation, even without the conclusive authority of lord Mansfield on that point, as already stated from *Cowper* 172: to which may be added lord Hardwicke's very decisive and peremptory opinion on the general subject in 1 *Vesey*, 202, and 2 *Vesey*, 357. In the first of these cases, which was that of *the earl of Derby v. the duke of Atholl*, in 1748, a bill was filed for a discovery concerning the general title of the Isle of Man, and for relief relating to the rectories and tithes within that island. "The defendant pleaded in general to the jurisdiction of the court, that the *Isle of Man* was an ancient kingdom not

part of the realm, though belonging to the crown of Great Britain, and that no lands, &c. there ought to be tried or examined into here; and demanding judgment whether he should be put to further answer. Lord Chancellor.—This comes to be of great consequence to all the courts in England. There are two general questions on this plea; first, Whether the plea be good in point of form; not a trifling form; for if the objection thereto on the part of the plaintiff be right, it is material to the nature of such a plea. Secondly, whether good in substance? As to the first, it is objected for the plaintiff that although it be shown in the negative, and alleged that this court has no jurisdiction over the *Isle of Man*, and that it is not to be tried here, yet it is not shown in the affirmative, what other court has jurisdiction, or that there are any courts in the *Isle of Man* holding plea thereof: and the rule is insisted on, that whoever pleads to the jurisdiction of one of the king's superior courts of general jurisdiction, must show what other court has jurisdiction. I am of that opinion; and that for the want thereof the plea is bad, and ought not to be allowed, if nothing more be in the case; as it is expressly laid down in 2 H. 7. 17. a, and *Doctrina Placitandi*, 234, and is agreeable to the general rule of pleas of this sort; as in the pleas of abatement, wherein it must be shown that the plaintiff may have a better writ. The reason of this is, that in suing for his right a person is not to be sent every where to look for a jurisdiction, but must be told what other court has jurisdiction, or what other writ is proper for him: and this is a matter of which the court where the action is brought is to judge. There are not many authorities on this head; but in the old books of entries the form of pleading is so; and the opinion of *Popham*, C. J. in *Yel.* 13, and *Fitz. Ab. tit. Jurisdiction concerning Wales*: and although lord *Vaughan* may have denied that to be law, he was a very strong *Welchman*, as appears through his argument; in which there is a great deal of good and useful learning; yet it never was delivered, though intended to be so. It is said to this, that the court ought in this case to take notice of what is the jurisdiction; that the matter of fact is shown; and it is likened to the case of inferior courts, wherein it is sufficient for the defendant to plead that the cause of action arose out of the jurisdiction of that court. But I cannot put this (which is a superior court of general jurisdiction, in whose favour the presumption will be, that nothing shall be intended to be out of its jurisdiction which is not alleged and shown to be so) upon a level with an inferior court of a limited local jurisdiction, within whose jurisdiction nothing shall be intended to be which is not alleged to be so. 1 *Saund.* 74. I was desirous to be informed how the pleas were in this court, which are looser than at law; and no case has been cited in which the plea to the juris-



diction of this court has not given jurisdiction to another, as to a visitor," &c. And afterwards, in *The Bishop of Sodor and Man v The Earl of Derby*, 2 Ves. 357, lord Hardwicke, speaking of the plea to the jurisdiction in the former case, and of the grounds on which he had over-ruled it, says, "I would not be understood when I over-ruled the plea of the duke of Atholl, to have over-ruled it on affirmance of the general jurisdiction of this country to try and determine the title to the *Isle of Man*, or any such feudatory dominion; but merely on this:—the plea was to the jurisdiction, without averring to what court the jurisdiction belonged; and the rule of law is, that in a plea to jurisdiction, like a plea in abatement, where it is to a court of general jurisdiction, you must also show where the jurisdiction vests, as well as negatively that it is not there: but if it be an inferior court, you need only plead thereto, and not show where it is," &c. If then the circumstances attending the defendant, of his birth in *Ireland*, and his residence there at the time of the publication made in this country, have the effect of rendering him not punishable in any court of

this country for such publication, this impunity must follow as a consequence, from its being no crime in the defendant, so circumstanced, to publish a libel in *Middlesex*. And indeed the argument rested wholly upon this position, that the defendant owed no obedience to the laws of this part of the United Kingdom, and if he owed no obedience to them, that he had been guilty of no crime in acting contrary to them. But such defence, if it can be in any form available in law is matter of absolute bar and an entire answer to the charge that he unlawfully published the libel in question; and the plea in that case ought not to have been in its present form, in which, as was said by the counsel for the crown, it is at most but an argumentative plea of Not Guilty. On this account therefore there must be judgment that the defendant answer over to the indictment.

*Respondent ouster.*

It was then ordered that the defendant do answer over *instantly*, otherwise that judgment must be entered against him peremptorily.

*Proceedings on the Trial of the Hon. Mr. Justice Johnson at the Bar of the Court of King's Bench Westminster, before a Special Jury of the County of Middlesex, on Saturday Nov. 23: 46 GEO. III. A. D. 1805.\**

INTRODUCTORY NOTE.

It is proper, in this place, to advertise the Reader of the proceedings which took place in the Houses of Parliament subsequently to the decision of the Irish Courts of Law on the motions for Mr. Justice Johnson's discharge, and antecedently to the trial at Bar. I have therefore extracted from Hansard's Parliamentary Debates the following passages:

"House of Commons, Friday,  
Feb. 8, 1805.

"Mr. James Fitzgerald, in consequence of the determination of the court of King's-bench in Ireland, on the construction of the act passed in the last session, for the more easy trial of offenders escaping from one part of the United Kingdom to another, in which determination the construction had been established by the opinion of two judges against that of one; in consequence also of the great agitation that had arisen in Ireland, on this determination, and assured of the concurrence of the gentlemen of the Irish bar, who, if they did not

concur with him, would have abandoned all that independence of judgment, and all those sound principles of law and reason of which they had ever been so honourably tenacious, felt it his duty to call the attention of the House to the provisions of the act in question, which so flagrantly called for amendment in the point he alluded to. He should have felt it his duty to give notice of a particular motion on this head, if he did not think the amendment would come better from the quarter in which the act had originated. He trusted the hon. and learned author of the act would offer such amendment as would be best calculated to preserve the spirit of the act, and at the same time to remove every thing that could give rise to such unjust construction.

"The Attorney General had no difficulty in allowing that the act required amendment in some points. At the same time he doubted, whether the amendments he thought it required were the same that were wished for by the learned gentleman, for he knew of no amendments that were rendered necessary by the proceedings in that court, nor did he think it right, in the present state of those proceedings, to prejudice the discussion of the case now before the

\* See the trials of Cobbett, pp. 1 and 53 of this Volume.



courts, by a parliamentary declaration of the sense of the House upon the construction of the act.

"Mr. *Fitzgerald* said, that according to his view of the justice of the case, the person taken up should be at liberty to give bail where the arrest took place, for his appearance where the offence was committed. It could never have been the intention of the framer of the act, that a person arrested in Ireland, for a bailable offence committed in England, should be brought to the place where the offence was committed without being allowed to give bail; or, that a person arrested in England for an offence committed in Ireland, should be conveyed to that country without availing himself of the legal mode of liberation till the time of trial.

"The *Attorney General*, in explanation, agreed perfectly, that the evil complained of by the learned gentleman had never been in his contemplation. The provisions of the act of last session had been copied from the act of 13th Geo. 3rd between England and Scotland, in which the defect had not been noticed until the occurrence now alluded to had discovered it in both." 3 *Hans. Parl. Deb.* 309.

"House of Commons, Tuesday,  
April 30, 1805.

"Mr. J. *Fitzgerald* called the attention of the House to an extraordinary construction (the arrest of judge Johnson) which had been put upon the act made for the purpose of arresting felons and traitors in any other part of the United Kingdom. He was proceeding to comment with severity on this construction, when the *Speaker* informed him it was not regular to enter fully into observations of this nature, but that he should simply give notice of the measure he intended to bring forward. The *Attorney-General* said that it was still his intention to move for an amendment of the law alluded to; but he did not think right to do so, while discussions were pending in the Irish courts of law on the true construction of it with respect to that country." 4 *Hans. Parl. Deb.* 507.

"House of Commons, Monday,  
May 27, 1805.

"The *Attorney General*, pursuant to notice, moved for leave to bring in a bill to amend the act of last session, for facilitating the arrest of offenders escaping from one part of the United Kingdom to another, or from one county to another. He had deferred this motion hitherto, lest it might appear, if he had brought it forward earlier, to be a prejudging of a

case pending in the courts of the sister kingdom. That case had been decided, and therefore he felt himself at liberty to bring forward his measure. The object he had in view, was simply to enable a magistrate in Ireland who might execute a warrant issued by a magistrate in England, to give the same bail as if the warrant had been issued in that country, and *vice versa*. The charge, that he had framed the measure of last session with a view to bring Mr. Justice Johnson a prisoner to attend his trial in this country, would fall before a statement of a fact. The bill had been prepared by order of the secretary of state the preceding session, though, from the advanced stage of the session, it had been deferred till last session, and he had obtained leave to bring in the bill some days previous to the conviction of Mr. Cobbett; and it was not till some days after, when the original manuscripts had been given up by Mr. Cobbett, that Mr. Justice Johnson could be considered as the object of a prosecution. Leave was given to bring in the bill." 5 *Hans. Parl. Deb.* 119.

The bill appears to have passed through its respective stages in the House of Commons without further notice. In the upper House, however, the following proceedings took place upon it:

"House of Lords, Tuesday,  
June 25, 1805.

"The Duke of Cumberland presented a petition from Mr. Justice Johnson. The petition, after setting forth the leading circumstances of his case, stated in substance, that the petitioner was put to very considerable expense in defending himself in a cause now depending in his majesty's court of King's-bench. That he was informed that a bill (the *Felons' Escape*) was in that House, which contained several clauses which if passed, would have the effect of an *ex post facto* law upon his cause, and prayed that their lordships, in their wisdom and justice, would so amend such clauses, as that the law, at the time of the alleged offence, might not be altered. The petition was ordered to lie upon the table." 5 *Hans. Parl. Deb.* 557.

"House of Lords, Thursday,  
June 27, 1805.

"[OFFENDERS' ESCAPE BILL.]—Their lordships having resolved into a committee on this bill,

"The petition of Mr. Justice Johnson, presented and read against certain clauses of the bill, which went as stated to affect his case in the nature of an *ex post facto* law, and praying, as in the concluding terms of the petition, 'that his case might not be affected by



a law which was not in existence at the time of the alleged offence,' was read.—Mr. Adam and Mr. Park were then heard, the former at considerable length, in support of Mr. Justice Johnson's petition. Mr. Adam went into a history of the former act to amend which the bill before the committee was intended; also the case of his learned client, from the time of its first being brought under the consideration of the Irish courts of law, to the present moment of its pending in the court of King's-bench in England. He dwelt upon the consideration of the bill, in its present shape, going to affect the learned judge's case in the form of an *ex post facto* law; adverted to the point, that the act under which he was to be tried, afforded no power of compelling the attendance of witnesses from Ireland; argued for the propriety of trying the learned judge before an Irish court of law, in a country where his person, character, and conduct, were better known, than they could possibly be in this. The learned counsel enforced principally these leading considerations, with his usual talents and scientific knowledge.—Mr. Park supported the arguments of his learned brother. He dwelt forcibly on the objectionable considerations of an *ex post facto* law, and adverted to the circumstance of there being no act before the 41th of the king, by which the learned judge could be tried in an English court of justice; and stated, that the learned judge had no opportunity of being heard before the other House of Parliament, because the clauses he principally objected to were not introduced till the third reading of the bill, when they were added by way of riders.—Mr. Adam, in the course of his address, referred to some clauses, the introduction of which, he humbly submitted, would, on the others being expunged, render the bill unobjectionable in the way complained of by the learned petitioner.—Their lordships then proceeded to the discussion of the provisions; and several amendments, chiefly verbal, were made, on the suggestion of the lord chancellor.

"The Earl of Westmeath, confessing himself not adequate to the task, said he would not trouble the committee with any law observations upon the subject, but begged leave to move the introduction of one or two clauses, which, we believe, were similar to those adverted to by the learned counsel.

"The Lord Chancellor [Eldon] observed, that what was now proposed, brought on the question of the desired amendments, and the proposed clauses. The adoption of those as proposed, he felt it his duty to resist, as nothing could be more

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true, or clearer in law, than that for a libel published in England, one could duly be tried by the laws of this country. He meant not now to go into the consideration of the general law, as relating to the publication of libels, but merely to say that he knew enough to be convinced, that were he or any man to write a libel in London, and publish the same in York, or *vice versa*, no lawyer could say that such would not involve two distinct offences, and for which the libeller might be tried either in the counties of York or Middlesex. With respect to the idea thrown out that there was no opportunity of compelling the attendance of witnesses, he observed, it was the general duty of all his majesty's subjects to attend in the king's courts of law, and that the process issued was the only means of compelling such due attendance. With respect to certain other considerations, which had been adverted to as applicable to the bill in question, he should certainly give the points his best attention, and try whether he could not, either on the report or on the third reading propose a clause, which would be the means of doing ample justice to the country, and to the individual concerned; as he freely admitted, justice could not be done to the country, if it were withheld from the individual. What he proposed would go to obviate any thing which might result from the present bill, in the way of construction, to prejudice the pending cause adverted to, and afford the party the means of compelling the attendance of witnesses on his behalf.—After some farther observations from the lord chancellor, the clauses proposed by the noble earl, who seemed to express himself satisfied with the tendency of what fell from the noble and learned lord, were negatived." 5 *Hans. Parl. Deb.* 622.

The following is a copy of the act:

STAT. 45 GEO. III. C. 92.

*An Act to amend two acts of the 13th and 44th years of his present Majesty, for the more effectual execution of the Criminal Laws, and more easy apprehending and bringing to trial offenders escaping from one part of the United Kingdom to the other, and from one county to another. (10th July 1805.)*

WHEREAS by an act, passed in the 13th year of his present majesty's reign, intituled, An Act for the more effectual Execution of the Criminal Laws in the two parts of the United Kingdom; and by another act, passed in the 44th year of his present majesty's reign, intituled, An Act to render more easy the Apprehending and bringin to trial offenders escap-



ing from one part of the United Kingdom to the other, and also from one county to another; provision is made for the apprehending of offenders in England, Scotland, and Ireland respectively, so that such offenders may be apprehended in one of the said parts of the United Kingdom for offences charged to have been committed within either of the other parts of the same: and whereas there is no provision made in the said acts, for admitting such persons to bail, who may be so apprehended for offences which by law are bailable: be it therefore enacted by the king's most excellent majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present parliament assembled, and by the authority of the same, that in case any person or persons shall be apprehended in one of the said parts of the United Kingdom for an offence which was committed, or charged to have been committed, in either of the other parts of the same, under any warrant endorsed in such manner as is in that respect provided by virtue of either of the said recited acts, such person or persons shall and may be taken before the judge or justice who endorsed the said warrant, or before some other justice or justices of the county, stewardry, city, liberty, town, or place, where the same was endorsed; and in case the offence be bailable in law, and such offender or offenders shall be willing and ready to give bail for his, her, or their appearance, according to the exigence of the said warrant, such judge or justice or justices by whom such warrant was endorsed, or before whom any such offender or offenders shall be brought, shall and may proceed with such offender or offenders, and take bail for him, her, or them, according to the exigence of the said warrant, in the same manner as the judge or justice who originally issued the same should or might have done; and such judge or justice or justices so taking bail as aforesaid shall take the recognizance or bail bond of the said offender or offenders, and of his, her, or their bail, in duplicate, and shall deliver one of such duplicates to the constable, or other officer or officers, or person or persons so apprehending such offender or offenders as aforesaid, who are hereby required to receive the same, and to deliver or cause to be delivered such recognizance or bail bond to the clerk of the crown, or clerk of the peace, or other proper officer for receiving the same, belonging to the court in which by such recognizance or bail bond such offender or offenders shall be bound to appear, and such recognizance or bail bond shall be as good and effectual in law, to all intents and purposes, and of the same force and validity, as if the

same had been entered into, taken, or acknowledged before a judge or justice or justices of the peace of the county, stewardry, city, town, liberty, or place, where the offence was committed; and the said judge or justice or justices so taking bail as aforesaid, shall transmit the other of such duplicates to the court of exchequer of such part of the United Kingdom in which such bail shall be taken, there to be kept of record; and it shall and may be lawful for the court, in which any person so bound to appear shall forfeit his or her said recognizance or bail bond, to transmit a certificate, testifying the forfeiture thereof, under the seal of the court, or under the hand and seal of one of the judges or justices of the same, to the court of exchequer, in that part of the United Kingdom in which such recognizance or bail bond shall have been taken; and it shall and may be lawful for such court of exchequer to proceed upon such certificate to levy the sum so forfeited, in the same manner in which they may proceed upon any recognizance or bail bond, taken and forfeited within the same part of the United Kingdom, and estreated in due course, into the said court: provided always, that if such offence be not bailable in law, or such offender or offenders shall not give bail for his, her, or their appearance, according to the exigence of such warrant, the said judge or justice or justices before whom such offender or offenders shall be brought, shall remand him, her, or them, to the custody of the constable or other officer or person who shall have apprehended such offender or offenders, and such constable, officer, or other person shall proceed to convey such offender or offenders into that part of the United Kingdom wherein the offence was committed, by such ways and means as are provided by the said recited acts respectively.

II. And whereas it may happen by reason of the difference in the law prevailing in the said different parts of the United Kingdom, that the judge or justice or justices before whom any offender or offenders shall be brought, under such warrant so indorsed, may not know whether the offence mentioned in such warrant be or be not bailable; for the better information therefore of such judge or justice or justices in that particular, be it further enacted, that in case any person suing out such warrant shall show, by affidavit or otherwise, to the satisfaction of the judge or justice granting such warrant, that it may be necessary to execute such warrant in a part of the United Kingdom different from that in which such warrant is issued, and it shall appear also to the judge or justice granting such warrant, that it is granted for an offence



for which it would not be lawful for any judge or justice or justices, before whom such offender or offenders might be brought, by reason of the endorsement of such warrant as directed by the said recited acts, to admit such offender or offenders to bail, such judge or justice granting such warrant shall, upon the face of such warrant, write the words "notailable;" and in all cases in which such words shall not have been so written, it shall and may be lawful for the judge or justice or justices, before whom any offender or offenders may be brought under such warrant so endorsed, to admit such offender or offenders to bail.

III. And whereas it is fit to provide for the appearance of persons to answer in cases where warrants are not usually issued, and to give evidence in criminal prosecutions in every part of the United Kingdom; Be it further enacted that the service of every writ of subpoena, or other process, upon any person, in any one of the parts of the United Kingdom, requiring the appearance of such person to answer or give evidence in any criminal prosecution in any other of the parts of the same, shall be as good and effectual in law as if the same had been served in that part of the United Kingdom where the person so served is required to appear; and in case such person so served shall not appear according to the exigence of such writ or process, it shall be lawful for the court out of which the same issued, upon proof made of the service thereof to the satisfaction of the said court, to transmit a certificate of such default under the seal of the same court, or under the hand of one of the judges or justices of the same, to the court of King's-bench in England in case such service was had in England, or in case such service was had in Scotland, to the court of justiciary in Scotland, or in case such service was had in Ireland, to the court of King's-bench in Ireland; and the said last-mentioned courts respectively shall and may thereupon proceed against and punish the person so having made default, in like manner as they might have done if such person had neglected or refused to appear in obedience to a writ of subpoena or other process issued out of such last-mentioned courts respectively.

IV. Provided always, and be it further enacted, that none of such last-mentioned courts shall in any case proceed against or punish any person for having made default by not appearing to give evidence in obedience to any writ of subpoena or other process for that purpose, unless it shall be made to appear to such court that a reasonable and sufficient sum of money to defray the expenses of coming and attending to give evidence, and of

returning from giving such evidence, had been tendered to such person at the time when such writ of subpoena or other process was served upon such person.

V. Provided always, and it is hereby further enacted, that it shall not be lawful for any judge or justice to endorse, by virtue of either of the said recited acts or this act, any warrant, unless the same shall appear to have issued, if in England or Ireland upon some indictment found or information filed, or if in Scotland upon some libel or criminal letters raised and passed under the signet of the court of justiciary, against the person or persons named in such warrant, or unless the same shall appear to have issued in respect of some capital crime or felony mentioned in such warrant; any thing in this and the said recited acts contained to the contrary notwithstanding.

VI. And be it further enacted and declared, that in all cases in which any warrant or certificate shall, by virtue of either of the said recited acts or this act, be required to be acted upon in any part of the United Kingdom, other than that in which the same was originally issued, it shall not be lawful for any court, or any judge or justice, to proceed to enforce or act upon the same, until it shall be proved upon oath to such court, judge, or justice, that the seal, signet, and signature upon the same, are the seal, signet, and signature respectively of the court, judge, or justice, whose seal, signet, and signature, the same respectively shall purport to be.\*

VII. Provided always, and be it enacted, that nothing in this act contained shall, with respect to any prosecution depending before the passing of this act, be deemed or taken by any court to alter or affect in any manner the construction of the said act of the 44th year of his majesty's reign, if any question should arise whether such prosecution be authorized by the true intent and meaning of the said act.]

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*Court of King's-bench, Westminster, Saturday,  
November 23, 1805.*

PRESENT,

The Right Hon. *Edward Lord Ellenborough*,  
Chief Justice.

The Hon. *Sir Nash Grose*, Knight.

The Hon. *Sir Soulden Lawrence*, Knight, and

The Hon. *Sir Simon Le Blanc*, Knight.

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\* Some of the provisions of this act were afterwards repealed, and others substituted in lieu of them, by the 54 Geo. 3rd, c. 186. See also as to *Scotland* the 48 Geo. 3rd, c. 58.



## SPECIAL JURY.

Thomas Barnes, of the Road Side, Esq.  
 Robert Helm, Esq.  
 John Chalice, of Vine Yard Gardens, Esq.  
 William Robertson, of Corporation Row, Esq.  
 Joseph Wilson, Esq.  
 Samuel Page, of King's Road, Esq.  
 David Badam, of London Street, Esq.  
 William Finch, of Grafton Street, Esq.  
 Richard Westall, of Charlotte Street, Esq.  
 John Wildar, of Weymouth Street, Esq.  
 James Douglas, of Baker Street, Esq.  
 Joseph Brown, of Clipstone Street, Esq.

*Counsel for the Prosecution.*

Mr. *Attorney General* [the Hon. Spencer Perceval, afterwards First Lord of the Treasury and Chancellor of the Exchequer];

Mr. *Solicitor General* [Sir Vicary Gibbs, afterwards Lord Chief Justice of the Court of Common Pleas];

The Hon. *Thomas Erskine* [afterwards Lord Chancellor Erskine];

Mr. *Garrow* [afterwards a Baron of the Exchequer];

Mr. *Wood* [afterwards a Baron of the Exchequer];

Mr. *Abbott* [afterwards Lord Chief Justice of the Court of King's bench];

*Solicitor*.—Joseph White, Esq. Solicitor for the Affairs of his Majesty's Treasury.

*Counsel for the Defendant.*

Mr. *Adam* [afterwards Lord Chief Commissioner of the Jury Court of Scotland];

Mr. *Park* [afterwards a Judge of the Court of Common Pleas];

Mr. *Lockhart*;

Mr. *Richardson* [afterwards a Judge of the Court of Common Pleas];

*Solicitors*.—Messrs. Neeld and Fladgate.

The indictment\* was opened by Mr. Abbott.

Mr. *Attorney General*.—Gentlemen of the Jury; It is with very considerable pain, and serious concern, that I rise to address you on this most extraordinary and important case; a case in which I have had the singular misfortune of being obliged, in my character of law officer of the king, to bring before this high court of criminal judicature, one of his majesty's learned judges, and to charge that learned judge with the offence of being author and publisher of an anonymous libel against the government of his sovereign;—an offence, gentlemen, the most alien, as it seems to me, from every sentiment of a liberal and ingenuous mind, from every habit of liberal impression, from every sentiment of honourable feeling, from every idea of the principle which guides the duty of the defendant's exalted station; and which ought to have so guided

him, both as a judge and a gentleman, as to have restrained him from committing that offence which is imputed to him upon this record. As it is, however, gentlemen, I am compelled to bring it before you, and it was with great pleasure that I observed the attention which you paid to the distinct and full opening which my learned friend Mr. Abbott, at my request, has made to you, of the charge as stated on the indictment; not merely, because by such opening and such attention, I think myself relieved from the necessity of painfully directing your attention to parts of the libel, with a detail which perhaps might otherwise be indispensable, but because from the circumstance of your now having heard it stated, you must already be acquainted with its general nature, and with the quality of the libel which I am now prosecuting before you and this learned court. The question is, who is the author of this libel? Whether this prosecution is well or ill instituted; whether it be well or ill directed as against the learned judge, are questions on which you can form no opinion, much less judgment, until the facts are established; but now, having heard attentively the libel read, no man can doubt what the character or quality of it is, and consequently I feel satisfied, that as attorney general, and public prosecutor of this indictment, you will think me justified in the character and description I have given of it.—I think you must be satisfied, as I am, that it is a libel of the most mischievous nature, in personality most scurrilous, most unfounded, most malicious, most scandalous, against the character, the honour, the ability, the station, of those who are most distinguished in Ireland, for character, for honour, for ability, for station; and further, you must be convinced it is most studiously and immediately directed against the character, the talents, the integrity of that noble lord who is at the head of the administration of the law and the equity of that part of the United Kingdom, in the purity of which the public have a deep interest; a character, which a judge, I should have thought, would have been the first to have vindicated, and unquestionably the last to have defamed. But, gentlemen, the purpose of this libel is obvious, as it seems to me; and its intent is as mischievous as the means are cruel, by which that intent has been attempted to be effectuated. The object unquestionably was, to revile and degrade the whole system of his majesty's government in Ireland at that time; and in the language of the record, to stir up the subjects of the king to hatred and dislike of his majesty, and of his government; and to cause it to be believed, that the people of that part of the United Kingdom were oppressed, aggrieved, and injured by that government; by reviling, traducing, vilifying, and defaming persons employed by the king in that government. This was intended to be accomplished by low personal abuse of persons who were no otherwise obnoxious to it, than that they

\* See it p. 359.



had been raised to their high stations by the royal grace and favour of their sovereign, who had exalted his learned judges for their talents and their virtue, to arduous and laborious posts of trust and power, in that part of the United Kingdom.

Gentlemen, who are those that are most entitled to respect, but are reviled and vilified in this libel? The first in rank, and the foremost in this libel, is the earl of Hardwicke, the lord lieutenant of Ireland, the representative of the king there; and, as such, independent of his virtue, entitled to respect. Gentlemen, it would be the utmost presumption in me, to affect to eulogize my lord Hardwicke; but this I can say of him, as he is the object of this author's slander, that he is a man, who, notwithstanding the diversity of sentiment which on many points have divided the people of that part of the kingdom, has had the peculiar good fortune, or, I would rather say, the peculiar merit, of having united all in one common sentiment of unanimous respect, and as representative of his king I may say loyalty, to his person and government: such is the character of the earl of Hardwicke, whom the author of this libel has selected as the object of his slander. The next person who is the object, and who is made to stand the brunt of this libel, is my lord Redesdale, the lord chancellor of Ireland. On the merits, the talents, and the virtues, public or private, of that noble and learned lord, undoubtedly I, for obvious reasons, could not without great impropriety enlarge; the very means I have of being best acquainted with his qualities, and most highly esteeming them, are the very reasons which would make it peculiarly unseemly in me to dwell on them; but, gentlemen, you will, I am persuaded, and every liberal man will feel, that no nearness of connexion, where his honour and integrity are impugned, can impose upon me the necessity of such silence as to pass over his character, instead of meeting, as I am bound to do, foul and deliberate slander with unequivocal contradiction. For of all my learned friends who are now around me, and who are indeed the common friends of that noble and learned lord, there is not one who would not testify to his ability, integrity, and fitness for the high station which he fills; his superior, in fitness for that station, could not be found among all the subjects of his king; and for high honour and absolute integrity, he is as far beyond the reach, and above the want of any praise of mine, as he is out of the power of the defendant, or any other man, to injure him by slander.

To these two characters are to be added those of Mr. Justice Osborne, and Mr. Secretary Marsden. Mr. Justice Osborne is one of the judges of the court of King's-bench in Ireland, a respectable and distinguished character, both as a lawyer and an individual; his office entitles him to respect from every

man, particularly from a brother judge, but his conduct in that office has procured him the esteem of every person who has had the pleasure to know him; he is a man of learning and integrity, whose life has been devoted to the service of the public, in which he has evinced honour and integrity. To these characters is added Mr. Marsden, a gentleman undoubtedly in a subordinate situation in government, when compared with those whom I have just mentioned, but holding a respectable situation, requiring attention to great state affairs, secretary to the lord lieutenant; a gentleman of unexceptionable character and conduct, who, from his situation and his services, is entitled to respect and regard. Gentlemen, to these we must add other persons connected with the government of Ireland, who are alluded to, and who are also traduced and vilified in these libels; but as they are not stated in the indictment, I will not trouble you with a recital of their names. These truly-estimable characters are, by this libel, held up to the hatred and contempt of the people; they are held up as incapable and ignorant, corrupt and sanguinary men; and as such, objects of execration and public infamy; they are stated to be "greedy speculators and blood-thirsty assassins."

But, gentlemen, when I have described to you this libel, as directed against these *individuals*, I have given to you but half its character; for whatever may have been the gratification of its author, by reviling these individuals, undoubtedly his *whole* purpose was not merely that of *private malice*; the great and main object was, *to depreciate the administration of the government of Ireland*. He well knew that nothing could more substantially effect that purpose, in the minds of any people who had the happiness to live under the administration of England, that nothing could so effectually alienate the affections of the Irish people from that government, as to induce them to believe that the administration of its law was corrupted—that the fountain of justice was polluted—that their judges were (or judge, at least, was) so corrupted that, in a criminal case of the highest nature, a judge was tampered with by the Crown, to pervert the course of justice—that the lord chancellor, with a fondness for money which was not his own, was taking sums of money from the secretary of the master of the Rolls, and depriving him of all fees, for the purpose of throwing them into the hands of his own secretary, the better to enable that secretary to discharge the pension of some unknown annuitant on his official profits—that the same lord chancellor had endeavoured to sap the foundation of justice—that the great seal of that country had been used for the purpose of gratifying the bent of private avarice; and this is done in the language of antithesis, which you know is the common art by which libellers attack the object of their malice—



the mask under which they endeavour to cover the grossest libels. In this way the author of this libel thinks he gives himself a sort of cover, and thus he speaks of Mr. Secretary Marsden:—"But I may, I believe, add what men also say, that if it were possible the ermined robe of the most awful attribute of his majesty, should have been wrapped round the acts of Marsden, in order to screen him from public disgrace, we might then look for another, but not less fatal end to our liberties and to our constitution, than that which rebellion or invasion could produce. And, in truth, they say that, except as to momentary effects, rebellion and invasion might be viewed with indifference, if it can be supposed that the stained hands of a petty clerk had been washed in the very fountain of justice."

Gentlemen, in addition to the description I have thus given you of the libel, I have this aggravation to state which arises from the period of its publication; it was given to the public a few months (I may almost say weeks, but certainly only a few months) after the bursting out of rebellion in Dublin, when the venerable chief justice of Ireland was murdered in the public street, in open day—a period when the state of the public rather required sedatives to compose, than any thing to inflame, the passions of the people: this circumstance marks the publication as peculiarly malicious, mischievous, and wicked.

Gentlemen, having stated this to be the character of the libel; having stated to you the object the author had in view by its publication, and the manner in which he proposed to himself to accomplish that object; I feel that when I have represented it as a libel, coming from such a source, on such an occasion, at a period so critical in that part of the United Kingdom, attacking, as it does, the administration of its justice, I may appear to you, and to my lord, perhaps, to stand in need of some justification or apology, for supposing it possible, that a learned judge should be the author of it; and unquestionably it was only by strong, and indeed irresistible testimony, that that conviction was impressed on my mind; but having obtained that testimony (I will tell you presently how I obtained the manuscript), it was impossible to doubt that Mr. Justice Johnson, the defendant upon this record, was the author.

I find, from indisputable evidence, that the manuscript is of the hand-writing of that learned judge himself, as you shall hear proved by the clear and indisputable testimony of two respectable gentlemen, who have long had a peculiar opportunity of knowing that judge's writing; for they are, and for many years have been, solicitors to the two boards of Revenue in Ireland, those of the Excise and Customs, to which this learned judge had been, while at the bar, for a considerable time, a standing counsel; by which means they had, daily and hourly, most fa-

miliar means of acquainting themselves with the variations of the hand-writing of that learned judge; and their testimony will be confirmed by others, who have also had much opportunity of knowing his hand-writing, so that there will be no doubt left of the fact. With such evidence before me, conviction in my mind became irresistible, as I have no doubt it will become in your's; and I am confident you will feel with me, that every circumstance which made it improper for me to accuse such a person until I had full proof, made it absolutely necessary for me to prosecute him when I had such proof; and that every circumstance which made it improbable that such a character could commit such an offence, made it absolutely inexcusable when proved. We might have expected that his knowledge of the law, a sense of the duty he owed to his own character, the duty he owed to the public, to his situation as applicable to the interest of that public; that peculiar allegiance, if I may so say, which he owed to the king, and those who, like him, are on the bench of justice; who may be said to be links in the chain of general tranquillity of the country over which it is their duty to administer the law; but who, by this libel, are rendered, or rather attempted to be rendered, unfit persons to fill their high stations;—all these considerations ought to have been so many securities for the good conduct of a judge: they are, in the first instance, so many pledges of his innocence, and barriers in the way of his committing any offence whatever, and render his guilt highly improbable; but when I find proof of this duty being forsaken, this barrier overthrown, I ask whether the guilt is not aggravated in its enormity tenfold? and whether it does not call with so much the louder voice, for a public prosecution?

Under these circumstances, it becomes my duty, painful as it is to me to execute it, to lay the case before you for consideration; and your's, painful as it is to you, to dispose of it according to the evidence, and to the rules of law; it is to be disposed of just in the same way as any other libel, and a due regard should be had to the character of the learned person who is the object of the prosecution, which may afford ground of more or less probability, that he is not the author of the libel; for the questions for you to consider will be, whether, in fact, he is the author, as I charge him to be; and whether he caused it to be published in Middlesex, as I say he did. Now, as to the question whether the publication be or be not a libel? I really apprehend I shall not have much to discuss. I cannot think that my learned friends, who are of counsel for this learned judge, will dispute that point; I hardly think they will address to a jury of their country, arguments with a view of inducing them to believe that this publication is not libellous. It is therefore unnecessary, as it seems to me, to say more on that head at present.



It now becomes my duty, in the course of proceeding, to point out to you some passages which seem to me to constitute the character of this libel. It was published at large, in two letters, signed *Juvena*, in the Weekly Register of Mr. Cobbett. The first subject of this prosecution begins with an allusion to the story of the Trojan Wooden Horse, which is stated as a wooden representative of wisdom. He says, speaking of the Trojans, "that they approached it as if it was possessed of authority and power: his wooden head towered above their houses; but though the machine itself was of innoxious wood, the credulous Trojans found its hollow head, and exalted sides, nothing less than receptacles for greedy speculators and blood-thirsty assassins." Having given this description of the wooden horse, the author of the libel proceeds to show, that "the ingenious author of this story did not mean to confine the lesson which it inculcates to the tale of Troy alone; he meant to caution future nations not to put trust or confidence in the apparent innocence of any such wooden instrument, and not to suffer themselves to be led to exalt it into consequence, or to pay it any respect. He meant to tell them, that any people who submitted to be governed by a wooden head, would not find their security in its apparent innoxiousness, and its hollowness would soon be occupied by instruments of mischief." Then, that it might not be equivocal, my lord Hardwicke is represented as this wooden head, Mr. Marsden as the instrument of its rapacity, and the whole is brought home to the Irish government, with my lord Hardwicke at its head; and the people are told, "that they are not to submit to be governed by this wooden head, nor to put any confidence in it, lest they should find it 'filled with instruments of mischief.'" The author of the libel then proceeds to take notice of my lord Hardwicke; and to observe, by way of derision, "that he is in rank an earl; in manners a gentleman; in morals a good father and kind husband; and that he has a good library in Saint James's-square." He observes too, "that but for Mr. Lindsay, he should here have stopped about lord Hardwicke, but that from this Mr. Lindsay," he says, "he further learnt, that my lord Hardwicke was celebrated for understanding the modern method of fattening sheep, as well as any man in Cambridgeshire;" so that, by this, my lord Hardwicke is distinguished for nothing, but the "knowing how to fatten sheep, and possessing a good library." Speaking of the lord chancellor of Ireland, he says, that lord Hardwicke was to be "assisted in all his councils by a very able and strong-built Chancery pleader from Lincoln's-inn;" and this part of his libel he concludes by saying, "the gift of lord Hardwicke to us, at such a period, cannot be compared to any thing else than the prank of Falstaff, at the battle of Shrewsbury, where the knight handed over

his pistol to the prince; for indeed, Sir," says he, "by the present to us of lord Hardwicke, that sentence has been proved to us in a bloody truth, which Falstaff said in a good-humoured jest, 'here's what will sack a city;'" that is to say, destroy, and ruin it, for no other interpretation can be given to that sentence.

The next part of the libel respects Mr. Justice Osborne, Mr. Marsden, and my lord Redesdale; and with regard to Mr. Justice Osborne, what is said of him is, "that after the rebellion, as soon as the government had fully recovered its recollection, a commission, directed to five of the judges, issued for the trial of those rebels, who had been arrested for treason committed in the county and city of Dublin. This commission having issued while the judges were on the circuit, was filled up (and very properly filled up), with the names of the five senior of those judges who were then on the circuits which were likely to terminate at the earliest period of time. Such was the reason given by government for the particular selection of those judges named in that commission, and it certainly was a good reason. In some time after this commission had been sitting, it became necessary to issue a new commission for the trial of rebels in the shires of Antrim and Down. In the appointment of this second commission, the principle which directed the selection in the first, was not adhered to. On the contrary, the junior judge of the twelve was very anxiously called out, and placed in the new commission, over the heads of a number of his seniors. This, however, could not, and ought not to have given offence to any of those senior judges; because, whatever opinion of them the government may have manifested in such an appointment, the opinion of the present government upon such a subject (known to be influenced by motives very different from general justice), is too highly contemptible to have any effect upon any of the learned judges in the public mind. The circumstance, therefore, was not at first attended to." And then he proceeds to state "the report of a government newspaper in Dublin, concerning the charge of Mr. Justice Osborne to the grand jury of the county of Antrim; that through the well-timed efforts and strenuous exertions of a wise and energetic government, &c. such crimes as lately disgraced this country, had been effectually checked." And then he adds, "with what amazement the grand jury must have received such a broadside, poured in on the truth of the fact, I cannot, because I was not present, know; but I can very well imagine what the feelings of twenty-three well-informed gentlemen must have been. Their respect, and a thorough knowledge of their duty, would necessarily keep them silent. But, though men remain silent, under the proper awe and control of a court of justice, their language only becomes more strenuous when that re-



strait is taken off, and they meet together in private confidence." And again, he says,

"But, Sir, suggestion does not stop here. Men ask, how could (if the learned justice did make any such assertion) the learned justice be led to give credit to a position, which contradicts the evidence of the senses of every man in the kingdom, who was present at, or knew any thing of the transaction? How could a learned judge be supposed to assert that which no man in the kingdom would assert, unless he had some reasons of the same nature as those which prevailed on Mr. Marsden's attorney-general, on the trials for high treason, to assert something of the same kind? Men, Sir, couple the *extraordinary selection* of the learned justice from amongst his fellows, with the *extraordinary assertion* attributed to him in a government newspaper; and they ask, if he made that assertion, where did he get his information? Was he ever in Mr. Marsden's audience-room, since the night of the 23rd of July? What passed there? What were the predisposing causes which induced government to select, particularly, that learned justice? Could government have foreseen (and if so, by what faculty), that the learned justice would have given an instruction to the grand jury, so very useful, and so very grateful to the government? What night telescope could have been applied to the eye of Mr. Marsden, which, through the dark womb of things unborn, could have enabled him to perceive, through this little future star, of praise springing from the creative lips of the learned justice? Here, sir, decorum towards you, and towards the public, inclines me to be silent as to other, and perhaps stronger observations;" and then follow passages to which I have already adverted. "But I may, I believe, add, what men also say, that if it were possible the ermined robe of the most awful attribute of his majesty should have been wrapped round the acts of Mr. Marsden, in order to screen them from public disgrace, we might then look for another but not less fatal end to our liberties, and to our constitution, than that which rebellion or invasion could produce; and, in truth, they say, that except as to momentary effects, rebellion and invasion might be viewed with indifference, if it can be supposed that the stained hands of a petty clerk had been washed in the very fountain of justice."

The lord chancellor is distinctly charged in this libel, with intermeddling with matters out of the course of his practice, and of using the great seal for the purposes of giving money to his secretary at the expense of the secretary of the master of the rolls, and other things are alleged that are discreditable to that noble lord.

Gentlemen, I will now advert to the nature of the libel against my lord Redesdale, which is introduced after what I have been stating, by way of contrast between what my lord

Redesdale is charged to have done, and what the late lord Kenyon would have done, if he had been placed in the situation of my lord Redesdale; that is, a contrast is drawn between what my lord Kenyon would have done, and what my lord Redesdale is said in the libel to have done, in the character of chancellor of Ireland; and in reading this part of the libel it is quite impossible for any one to be so blind as not to know he is so introduced. This is an enormous part of the offence contained in this libel, a scurrilous and infamous attack on the character of lord Redesdale, and therefore it is proper for me to call your attention to it—thus it runs:

"It is said of lord Kenyon that he loved money; if so, he loved his own money only, and not the money of any other man; lord Kenyon, therefore, as chancellor, never would have made any rule or order, by the effects of which, the secretary of a master of the rolls would be deprived of all fees, for the purpose of throwing those fees into the hands of the secretary of the chancellor, the better to enable that secretary to discharge the pension of some unknown annuitant on his official profits;"—directly charging, that although lord Kenyon loved money, it was his own money only which he loved, but that lord Redesdale loved the money of other people, and that he would take money out of the pocket of one person to put into the pocket of another, who had no right to it. Then the libel goes on to charge lord Redesdale with defects, and contrasting him still farther with the character of lord Kenyon. "The professional pride and the inborn honour of lord Kenyon would never have suffered him to enter into a combination to sap by underhand means the independence of his brethren the judges; he never would have suffered the great seal in his hands to be used for the purpose of garbling the bench, in order to gratify those who might be contented publicly to eulogize that government which privately they must have despised; nor would he have employed any of his leisure in searching into offices for practices by which he might harass the domestic arrangements of others, whose pride and whose integrity would not bend to his views, and thus double the vigour of his attack, by practising on the hopes of some, and endeavouring to work upon the fears of others." But it would be trespassing on your time to advert to other passages of this libel; enough has been already stated, to prove it to be most slanderous and most foul.

The other question for your consideration will be, whether this libel is brought home to the learned judge? not only whether he is the guilty author of it, but whether he is the publisher of it, as he is charged to be upon this indictment? And it will here be necessary for me to state to you, shortly, the manner in which this was discovered, and how we came to know whose hand-writing this publication is, as it shall appear to you in evidence.



Gentlemen, this libel appeared in Mr. Cobbett's Register in the month of November 1803. He who thus gave forth this libel to the public, was made the object of prosecution; he was indicted, and his trial came on to be heard at the sittings after Trinity term, in the last year; upon that trial he was convicted; and he caused communication to be made to me, representing that he conceived he had been ill used by the author; that he was ready to give up the manuscript, if any means could be found of tracing out the real author. I had but one duty upon that occasion, which was, to receive the manuscript, which was given us, with a perfect understanding, that it was neither expressed nor implied, in any degree, that Mr. Cobbett should thereby redeem himself from his share in the transaction. It was therefore in this manner that Mr. Cobbett communicated this manuscript to us, and then, an opportunity was necessarily afforded of examining the hand-writing; and that took place which I have already told you, namely, that these two gentlemen who had such familiar opportunities of knowing the hand-writing, seeing this manuscript, knew it to be his. It is not a short scrap of paper, like a draft on the back of a letter, such as two lines with a single pen, but an extension of writing, a continued writing extending over several pages, in the course of which there is a great variety of writing, by the accident of having a better pen at one part of it, than at another; or, from one part of the writing being written with more care than another. So that the whole of it displays the character of the hand writing, in such a manner, as that the witnesses cannot be deceived: it is a hand well known to them, it is a free and flowing hand, with which they have been long acquainted, having acquired a minute knowledge of the character of it in its various shades, while they were solicitors, and the learned judge was counsel to the revenue boards; in which situation they were in the daily habit of receiving his opinions on cases which they laid before him as counsel. In this gentleman's writing, as in all others, there is a difference at times; sometimes it is in a free and easy manner, sometimes a little more cramped or stiff; sometimes rather loose and careless; while at others, it is more plain and clear, when care and attention are required; in all which variety, these gentlemen had an opportunity of perusing the hand-writing of this learned judge; and I am told that when the long papers on which these libels are written, are put into the hands of the witnesses, they will not have the least shadow of a doubt of its being judge Johnson's hand-writing: not only will they say, "this we believe to be the hand-writing of Mr. Justice Johnson, from the general character of it," (which is all that is required in order to prove a hand-writing), but they will say this: "that from the nature and character of such and such words, we

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know it to be his, it being the mode he has long ago adopted of writing them, as we know from long acquaintance with his writing." If so, gentlemen, this seems to me to be a case, if I am not deceived in it entirely, which cannot break from under me; for these two gentlemen will be confirmed by the testimony of others, who have had similar opportunities of observing the character of the defendant's hand-writing; and they will state, not only their firm belief, but perfect conviction, that this is the hand-writing of the learned judge, and if so, there will be no dispute whether he be the author of the libel or not.

But it is here to be observed, that we are now trying this learned judge in the *County of Middlesex*, and not in *Dublin*: though painful it would be to me, and to you, to hear, after it is proved by indisputable testimony that this learned judge is the author of this libel; yet my learned friends are come here, not to deny the fact, and meet the charge, which weighs so heavily upon the character of this learned judge, but merely to turn us round by saying, "to be sure, you have proved the paper to be of his hand-writing, beyond a doubt, but now you must prove that he published this libel in the county of *Middlesex*, or else a jury of that county cannot convict him, for the law requires that you should prove it in the county in which it is stated upon the record to have been committed. He admits himself to be a person who has slandered his brother judges, and the representative of his king, but it was in *Dublin*; and as it was in *Dublin* that he did it, you must try the cause in the county of *Dublin*, where it was done, and not in the county of *Middlesex*, where it was not done." Painful will it be to me, painful will it be to you, gentlemen, to hear such a defence, and painful must it be to my learned friend Mr. Adam, if he shall be driven to the necessity of defending the learned judge in that way; yet I cannot help suspecting that something of that sort is intended, and that it will be attempted. Yet if it be, the question of law on that point will fall, like the fact, from under them; I cannot help thinking that something of that sort will be attempted; because the first attempt that was made to defend this learned judge against this charge, was, not to meet it as a person conscious of his own innocence would have done, and ought to do, by joining issue upon the fact, is he the author, aye or no? not to meet the case upon the merits, but the attempt was, to plead to the jurisdiction of this court; by which it was contended that the case was wrongly brought here; and that attempt, I have little doubt, will be made again, although unquestionably, it will meet with the same fate as it did before. But that such a defence should be set up by the learned judge, is most extraordinary, which will be giving up the merits of his case altogether, for that must be obvious to every one; it will be trying to shelter himself under a point of form; on which you

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will not receive direction from my learned friend or from me, but you have the happiness to be at present guided in that respect by the highest authority which this kingdom affords for that purpose, by the wisdom of the whole court of King's-bench, to direct you in point of law. I will, however, venture to state to you shortly, that in point of law, the cases of *misdemeanors* and those of *felony* differ. In *felony* there are distinctions between *accessaries* and *principals*; but in *misdemeanors* there are no such distinctions, because in *misdemeanors* all parties concerned in them are *principals*; so that if any act be done by one person under the direction of another, that act is, in contemplation of law, done by himself, that is, by him who directed it to be done, as much as by him who actually did it; and therefore, if Mr. Justice Johnson, in *Ireland*, requested Mr. Cobbett to publish this libel in *England*, the publication of it in *England* by Mr. Cobbett, is a publication by Mr. Justice Johnson in *England*. Nothing whatever turns on the circumstance of his residing in *Dublin*, any more than if he were in the place where we have the happiness to live; any more than if he resided in *Surrey*, and employed a printer to print and publish a libel for him in *Middlesex*. The case they must contend for is, "that if Mr. Justice Johnson was living in *Surrey*, on the other side of *Westminster-bridge*, and he had sent to Mr. Cobbett this libel by the penny-post, to be printed and published in *Middlesex*, Mr. Justice Johnson could not be considered as guilty in the county of *Middlesex*, for that he must be tried in *Surrey*." They must contend, and contend successfully to that extent, or they cannot sustain this objection.

It matters not whether from *Cornwall* or from *Dublin*, this libel was transmitted to *Middlesex* (and by the way, *Cornwall*, though in *England*, is at a greater distance than *Dublin* from *Middlesex*); this is a distinction which makes no difference in the case, according to the law. But, perhaps, I may relieve my learned friends from the desperate and disgraceful necessity of attempting to maintain this untenable position, by telling them, there is a publication here in *Middlesex*, because the letter, which Mr. Cobbett will prove he received *with the post-mark of Dublin on it*, was directed and delivered to Mr. Cobbett in *Middlesex*; not only directed to him in *Middlesex*, and delivered to him in *Middlesex*, but also read by him in *Middlesex*, printed by him in *Middlesex*, and published by him in *Middlesex* to the world at large; there is, therefore, an end of the case, and there is no question that that act alone is a publication by this defendant in *Middlesex*. I will go farther, and maintain, that if Mr. Cobbett, who had so received this libel, had, instead of publishing it in his *Register*, handed the manuscript to government, that alone would have been sufficient for me to come here before this

Court and you, to call for a verdict of *Guilty* against this learned judge; and therefore, although, I apprehend, something may be said on this point, it is quite impossible for my learned friends to make any real impression upon your minds by that species of defence. But these are points not at all connected with the *merits* of this case; if they amount to any thing, they are mere matter of technical form,—a legal point, on which, unquestionably, you will defer to the learning of the Bench.

Now, gentlemen, having detained you perhaps too long on this case, I have only one thing more to say to you, which is in some degree already anticipated; to meet observations which may be made to the prejudice of the case, on account of this prosecution being so late after the offence of the publication itself. I have stated to you already, that from the period of Mr. Cobbett's trial and conviction for the publication of this libel in his *Register*, and of his delivering up the manuscript to us, that we might endeavour to trace out the author, by discovering whose handwriting it was, I had no means of tracing out immediately the hand-writing of Mr. Justice Johnson, and therefore there has been no delay on the part of this prosecution. The case of Mr. Cobbett was tried at the sittings after *Trinity Term*, 1804; this indictment was preferred in the very next term; it is, therefore, not for me, but for the defendant, if he thinks proper, to assign reasons for the delay, whose appearance was not entered sooner, so as to enable us to go to trial. I do not ask for any reasons for it; all I say is, that the prosecution is free from blame on that account. It is not I who have been indifferent to the feelings of the learned judge, by delaying the trial of a charge which so seriously affects his character; whatever fault or whatever merit there is in the delay is not our's, but rests with the defendant.

#### EVIDENCE FOR THE CROWN.

Mr. Joseph White sworn.—Examined by Mr. Solicitor General.

Take that paper into your hand, sir [The witness taking it.] From whom did you receive that paper, sir?—Mr. Cobbett.

Mr. Cobbett who was defendant in a former case which was tried here?—Yes, sir.

Is it now, sir, in the same situation in which it was when you received it?—Yes, certainly it is.

Mr. Joseph White cross-examined by Mr. Park.

Has it been in your custody ever since, or have you put a mark upon it?—I marked it.

It is marked by yourself?—Certainly.

By which you know it?—Certainly.

Mr. Park.—That is quite enough, sir.

Mr. Erskine.—Call Mr. Cobbett.



Mr. William Cobbett sworn.—Examined by  
Mr. Erskine.

Give that paper to Mr. Cobbett. Will you look at that paper, sir [Giving him a paper.] Have you seen that paper before?—Yes.

When did you first see that paper, and how did you come by it?—I first saw it in the month of October, 1803.

Was it sent to you?—There are different dates, showing that one of them came before the other.

By what conveyance did you receive that paper?—I received it from Mr. Budd, in Pall-mall, the bookseller in Pall-mall, from his house or shop; which was, at that time, my shop or house, from whence letters of communication came to me.

In what manner did it come to you?—It came to me under cover, directed—

Mr. Adam.—Stop, sir. Have you got the cover here?—No.

Mr. Erskine.—What is become of the covers?—I do not know.

Have you looked for them?—No; it was useless, because they were immediately thrown into the fire; but this I recollect with respect to the covers, that they had the Irish post-mark upon them.

Mr. Adam.—My lords, if they talk of covers they must produce them, otherwise this is not evidence.

Mr. Erskine to the witness.—Have you any doubt that the covers, of which you have just now been speaking, were destroyed?—No, sir; they were destroyed immediately.

Mr. Adam.—Do you know that these particular covers were destroyed?

Mr. Erskine.—He speaks of no other covers.

Witness.—No, I cannot swear that they were destroyed.

Mr. Erskine.—I rather think this is not the time for my learned friend, Mr. Adam, to interpose.

Mr. Adam.—I am asking with regard to the destruction of these particular covers, which must be taken to exist, unless proved to be destroyed, and therefore cannot be talked of unless they are produced.

Mr. Erskine to the witness.—Have you any doubt that these covers were destroyed?—None at all.

Mr. Park.—We must examine farther into the covers, for they are written directions on the letters; and I submit to your lordships, that my friends cannot interpose in the midst of our examination.

Lord Ellenborough.—As far as we have got, we have, from the witness, probable evidence of the destruction of these covers, as it seems to me. We have such probable evidence of the destruction of the thing, as to let in parole evidence of its nature; if you, in your examination of the witness hereafter, can change it, that will be evidence for you to

support your objection to the parole testimony.

Mr. Erskine to the witness.—Having said that you received these letters under cover, and that you have no doubt the covers were destroyed; what mark was on this particular cover?—It had an Irish post-mark on it.

What address was on the cover?—To Mr. Budd, No. 100, Pall-mall.

Being the office which received communications for you, and from which they were forwarded to you?—Yes.

Was Mr. Budd's the place where, in the publication of your Register, you referred communications to be sent?—In the first place I received, in the same hand-writing as the other letters, an anonymous letter, requesting of me—

Mr. Adam interposing.—What is become of that letter?—It was published in the Register.

What is become of it?—I believe it was destroyed.

Mr. Erskine.—Will you state what were the contents of the letter of the same hand-writing, which you believe to be destroyed?

Mr. Adam.—My lords, surely this is going too far: Mr. Erskine is now proposing to give evidence of some other letter, which, for aught that appears, has no connexion whatever with those which are the subjects of this trial, not connected with those covers which the witness thinks he destroyed, and which your lordship says there is probable reason to suppose were destroyed, and upon which your lordships think that parole evidence of their contents becomes admissible. The witness only says he believes the letter which Mr. Erskine is examining to was destroyed.

Mr. Erskine to the witness.—Have you any doubt of that letter being destroyed, any more than the covers you have been speaking of?—None at all.

Will you relate, sir, the circumstances under which this letter came to be directed to Mr. Budd?—I received a letter, inquiring of me whether it would be agreeable to me to receive, from Ireland, certain useful and true information respecting the state, respecting public affairs in that country.

Mr. Adam.—My lords, my learned friend, as I humbly submit to your lordships, is going now quite beyond that which the case warrants. He is now seeking to ask the contents of a paper which the witness received, without establishing any connexion whatever with that which is said to have been destroyed; which is going beyond the boundary.

Lord Ellenborough.—Hereafter he is to apply this evidence, in some shape or other, to the case, as it appears; he is endeavouring to show why he cannot produce it, which is, because he thinks it is destroyed; *non liquet* that it will have any bearing on the case; it cannot affect the defendant, unless it be a part of his correspondence. The purpose is to show how the letter came to be directed to a



particular place; but I take it for granted, they desire this evidence to be given, to show the manner in which the correspondence took place between the witness and somebody in Ireland.

Mr. *Park*.—But how does all this affect the defendant?

Mr. *Adam*.—If this is not afterwards made to apply to the defendant, it will of course go for nothing.

Lord *Ellenborough*.—Whether from the defendant or a stranger, is immaterial for our purpose; it cannot affect the defendant, unless it be applicable to some act of his: it tends to account for his address, and that is all it purports to do; it does not address itself to any thing else.

Mr. *Erskine* to the witness.—You were saying that a letter, of which you are speaking, is in the same hand-writing.—

Mr. *Park*.—This is proceeding to prove hand-writing by comparison, which is not evidence.

Lord *Ellenborough*.—This really is nothing more than to account for the letter being directed in a particular manner, and really it is hardly worth a contest. As to the hand-writing in that letter, there is nothing in this evidence to affect the defendant, and it does not signify a farthing. Let the witness proceed.

Witness.—In case it was agreeable to me to receive such communications, I was desired to say where I should wish them to be directed to; and, in the next number of my Register, I, of course, did say, I wished them to be directed to Mr. Budd's, No. 100, Pall-mall.

Mr. *Erskine*.—Did you, sir, subsequently to the time of your giving in your Register that public reference to Mr. Budd, receive that which you now hold in your hand?—Yes, I received both; that was received first, which is dated the 29th of October; both addressed to Mr. Budd, and which Mr. Budd sent to me in consequence of an order he had from me.

Did you, in consequence of having received them, publish them in your Register?—Yes, I did.

What is the date of the second?—The date of the second is, the 2nd of November. One is dated the 28th of October, and the other is dated the 2nd of November.

Both your house, and Mr. Budd's, I understand to be in the county of Middlesex?—Yes, sir, in Pall-mall, and Duke-street Westminster.

Mr. *Cobbett* cross-examined by Mr. *Adam*.

You do not live at No. 100, Pall-mall yourself?—No, sir.

Where do you live?—At No. 15, Duke-street, Westminster.

You lived there at the time this publication was inserted in your Journal?—Yes, sir.

Did you receive them at your house, or where did you receive them?—At my house in Duke-street.

Then, if I understand you, Mr. Cobbett, this paper that you hold in your hand, first came to No. 100, Pall-mall, addressed to Mr. Budd?—Yes, sir.

Did they come open to you?—The first was opened by Mr. Budd. After the first, I requested him not to open the next, but to send them to me as he received them, the next therefore was not opened.

Then Mr. Budd sent them to you?—He sent them to me.

By whom did he send them to you?—I do not recollect, sir.

Mr. Cobbett, you mentioned that these covers had a mark upon them; where are they now?—I do not know, sir; they were destroyed, I think.

You think?—Yes.

Did you ever search for them?—No, sir.

Have you never searched for them since?—No, never searched for them; I was looking into the drawer, where perhaps these papers were thrown, as others were, and I know that I have never seen them; and I believe, sir, in answer to your question, that the office was searched; and that at the time the letters were received the covers were torn off, and thrown into the fire.

And that you suppose, from its being your usual custom?—Yes.

Have you made any recent search for them?—No, sir.

Mr. *Erskine*.—I have no farther question to put to Mr. Cobbett at present, but he will be so good as not to go away, since we may have occasion to examine him. But one question I forgot to ask: I believe that is your Register [putting a number of his weekly Register into the hand of the witness]?—Yes, it is.

[Mr. Cobbett was desired by the attorney-general to stay.]

Mr. *Richard Waller* sworn.—Examined by Mr. *Garrow*.

Mr. Waller, do you exercise any public office in Ireland?—I do.

What is the office you hold?—Solicitor to the commissioners of the customs, sir.

How long, sir, have you filled that office?—Upwards of three-and-twenty years, as principal; and I was in the office before that.

Is there any person at the bar who acts as standing counsel to the board? any consulted as counsel to the board? at the bar, sir, of this court as counsel to the board there?—There are always two counsel to the commissioners latterly, formerly there was only one.

In the course of your duty, had you frequent opportunities of communicating with the gentlemen who act as counsel to the board?—Very frequent.

Did you receive directions from them as to your conduct in your office, as to carrying on proceedings, and so on?—Almost daily consulting with them.

Have you occasion frequently to have



written opinions from gentlemen standing in that relation to the board?—Very frequently.

Was Mr. Robert Johnson, now one of the judges of the court of Common Pleas in Ireland, ever in the situation of counsel to the board to which you are the solicitor?—He was.

As nearly as you can recollect, for how long a time?—As I recollect, very nearly ten years.

During that period, sir, had you very frequently personal communications with him?—Very frequently.

Did you very frequently receive writings from him?—I did.

Did you frequently see him?—I did.

Did you become well acquainted with his hand-writing?—I did: I think as well as I could be with that of any one.

Mr. *Garrow*.—Give the witness the letter of the 29th of October. Will you be so good as to look at that paper [giving him the letter, the witness looking at it]. I believe, sir, you have had an opportunity of examining it very carefully, before you came here?—I did twice; I have examined this in June 1804, and in November last [*instant he meant*], and now in this court.

You carefully examined it?—I did, carefully, for I signed my name to every page.

Do you believe that to be the hand-writing of Mr. Justice Johnson?—*Witness*. [Looking at the whole paper again.]—I do, sir.

Have you any the least doubt that it is his hand-writing?—I do not feel that I have a doubt in my mind but it is his hand-writing; there are some little words here and there I do not know; they may be the printer's marks, but what I mean is, that I do believe the body of it to be Mr. Justice Johnson's writing.

Will you look at the top of the first page, and which you take not to be his hand-writing?—I do not believe that is his hand-writing [pointing at a part of the paper].

Tell us what that is?—I declare I do not know.

Mr. *Cobbett* looking at it said, it is long primer, indicating to the printer the characters in which he was to print it.

Mr. *Garrow* to the witness Mr. *Waller*.—As to the body of the letter, you say you entertain no doubt of it?—Indeed, sir, I have as little doubt as any man can have on any subject.

[The witness looking at the other letter.]

Mr. *Garrow*.—Have you examined with equal care, that paper?—I did, and put my name to each, indeed each side.

With the exception of like notes, which are of the hand of the printer, have you the same opinion of that as of the other?—I have no doubt; I entertain as little doubt that it is the hand of Mr. Justice Johnson, as I can on any subject whatever.

Lord *Ellenborough*.—Are the dates 28th or 29th, dates put on this, or on the other side of the water?

†

Mr. *Cobbett*.—The 29th of October is the date which came on one of the papers.

Lord *Ellenborough*.—As to the other, what do you say, the second letter?

Mr. *Cobbett*.—That letter had no date when it came, and 1-8-0-3, were written on it by a young man belonging to me; the figures 1-8-0-3 were written by my direction.

Mr. *Garrow*.—And “affairs of Ireland?”—They were written by me, to make it correspond with others.

Mr. *Garrow* to the *Court*.—“Irish affairs,” were written on it, and Mr. *Cobbett* wrote on it “affairs of Ireland,” to make it correspond with others.

To Mr. *Cobbett*.—With directions for the manner in which it was to be made?

Mr. *Cobbett*.—No, sir, that was made by another.

Mr. *Erskine*.—That is in your Register of the 28th of November?—Yes, sir.

Lord *Ellenborough*.—The copy you have now shown him, is his published copy?

Mr. *Erskine*.—Exactly so, my lord; this evidence is necessary merely as matter of form.

Mr. *Richard Waller* cross-examined by Mr. *Park*.

Were you the sole officer of the commissioners of the board of customs, Mr. *Waller*?—I am the sole solicitor of the customs. The office which I hold is solicitor to the commissioners of the board of customs.

Have you any partner in the office?—No, I have not.

How long has Mr. Justice Johnson ceased to be counsel to the board?—I believe he was made a judge, I rather think, in the month of June 1801.

Then from that time, of course, all connexion as to your office (though probably private friendship had not) ceased as between you and him?—Except meeting him in the streets, I had no connexion with him; neither did I often see him, except on the bench, afterwards.

You had no acquaintance, or business to transact with him, after that time?—Certainly not, that I recollect.

Mr. Justice Johnson was in parliament in Ireland for a great many years before the Union?—He was, sir.

And for ten years of that period filled the office you have alluded to very ably?—I believe he has held another public office. Do you mean previous to his being counsel to the commissioners?

That I want to know from you, whether it was at one, or at different times, you will be so good as to tell us?—I had no acquaintance with Mr. Johnson before, but I did hear that he held another office under government.

It was a confidential situation he had in your board?—Certainly he was a confidential servant of government.

Did he hold this office you have alluded to,



in your board, at the period when the Union between Great Britain and Ireland took place?—He did, and he was then a member of the House of Commons.

He was then a member of the House of Commons?—He was, and he was a member of the House of Commons in the last parliament of Ireland.

You had no opportunity of seeing his hand-writing since he was a judge, you only met him in the street, no intercourse of civilities past between you afterwards?—I do not recollect any communication, but there might be affidavits, or something of that sort, signed by him.

You said you have seen the paper which I have in my hand [meaning one of the libels], three times I think; once since you came last to England, and twice before?—I did.

Where? In England, or Ireland?—In England, every time I saw them.

In November, and at the time you were before the grand jury?—I did.

Did you see them in the preceding June, or at the time of Mr. Cobbett's trial?—No; I saw them in Mr. White's hands afterwards.

I would beg of you to look at these papers, they seem to me to be remarkably well written; did Mr. Justice Johnson always write so clearly and so neatly as that?—No, he did not.

His opinions were not so written?—Not quite so small.

Nor quite so fair?—His general hand was free, but more like the size of the words "affairs of Ireland."

Mr. Park.—The words "affairs of Ireland," is quite a different hand, I only wish to have that understood, my lords. The first letter contains at the top of it, "affairs of Ireland," which the witness says is more like the common writing of the defendant.

You admit this writing is much more fair and small than the general hand of the learned judge?—It is much fairer and smaller than his common writing.

You hold another office under government, I understand?—I have no other office under government; I am general agent to the University of Dublin, and I have another office, but not under government.

Mr. Richard Waller re-examined by Mr. Garrow.

You have stated, that the learned judge's opinions were not generally written either so small or so fair as this. They were not intended to be printed, I believe?—Certainly not, they were for our direction.

Mr. Garrow.—Not intended for the press?—They were not.

Mr. Charles Ormsby sworn.—Examined by Mr. Wood.

Mr. Ormsby, do you hold any office in Ireland?—No, sir.

Are you acquainted with Mr. Justice Johnson?—I am, sir.

How long have you been acquainted with him?—I suppose twenty years.

Thirty years?—Twenty.

You are an attorney, I believe?—I am, sir.

An attorney in Ireland?—Yes.

And you are acquainted with Mr. Justice Johnson?—I have seen him very often write franks; I have seen him write franks; and opinions of his writing I have seen, which I am sure were of his writing; and also pleadings corrected by him. I am in partnership with Mr. Reeves, and by that means have seen his opinion, when he was counsel for the revenue in Ireland.

Have you sufficient acquaintance with his hand-writing to know it when you see it?—Yes, I have.

Now sir, have you examined that paper before? [putting one of the libels into the hands of the witness]—I saw it this time twelve-months.

Did you look it over carefully?—I did, sir.

Lord Ellenborough.—Is that the paper of the 29th of October?—Yes, my lord.

Mr. Wood.—Having examined it carefully, be so good as to tell us, whether you believe that to be Mr. Justice Johnson's hand-writing?—There are a few words, I see, that are not his hand-writing; but the general tenor I do apprehend to be his hand-writing.

Can you read the words which are not his writing? [The witness looking at the paper.]

Mr. Justice Lawrence.—Is the general body of it his hand-writing?—For instance, at the end, "I am yours," is a different hand-writing; and 586, and 545, are not his writing.

Lord Ellenborough.—But the general body?—The general body I apprehend to be his writing.

Mr. Garrow.—The parts he points to, as not of the defendant's hand-writing, are annotations of the editor.

Mr. Justice Le Blanc.—Are the words, "I am, sir, yours," the annotations of the editor?—I apprehend so, my lord.

Mr. Cobbett.—These were words put in by myself; "I am, sir, yours," were in, but I was afraid the printer would make a mistake, and I put the same words up here [pointing at the place in the paper], to be more intelligible to the printer. As to the bottom of the first page, the words were not written by me, but by a person who was in my house, which is a reference to a former letter: the words are, "for the introductory letter, see page 586; and for letter 2, see page 545."

Mr. Justice Lawrence to Mr. Cobbett.—Written by some person in your office?—Yes, my lord.

Mr. Wood to Mr. Ormsby.—Now, Mr. Ormsby, what do you say to the second?—The words "affairs of Ireland," are not of the hand-writing of Mr. Justice Johnson at the beginning; but the general writing I believe to be his hand-writing, from the best opinion I can form.

Lord Ellenborough.—Do you mean the



writing at large, with that exception?—With that exception, my lord.

Mr. *Garrow* to defendant's counsel.—Do you wish to ask this gentleman any questions?

Mr. *Ormsby* cross-examined by Mr. *Richardson*.

Do you know that Mr. Justice Johnson held a confidential situation under the crown, besides being counsel for the commissioners of the customs?—He was barrack-master, and afterwards counsel to the revenue board.

Do you know when he ceased to be counsel to the revenue board?—Immediately preceding his being a judge, in 1801.

Was it immediately after the Union?—I suppose it was before that time.

You had an opportunity of seeing his corrected pleadings?—Yes; and I have had franks from him, before he was a judge; and I have seen his signature, since he was a judge, such as a signature to affidavits; but I do not recollect seeing any of his letters immediately after he was a judge.

Was the character of his hand-writing to the corrected pleadings, as correct as that?—They were rather of a looser hand than this—this seems to be written more close; but the casting of the letters is the same, particularly the letter *I*; and the corrected pleadings was rather a wider hand.

Lord *Ellenborough*.—Do you speak to opinions?—To opinions, my lord, and the corrections of pleadings. The letter *I*, in particular, is like the letter he signs his name, *Johnson*. The hand-writing to opinions, or pleadings, was what I call a more scattered hand.

Mr. *Richardson*.—Is this as large as the hand to pleadings?—No; this seems to be a contracted hand.

He wrote a worse character in pleadings?—It was a looser and a larger hand, and not written with the care which appears in this, of putting so much on the paper.

Why so, this is on a large sheet of paper: I want to know whether his hand was as fair and equally well written as this generally?—I do not know exactly how to describe it otherwise than as I have done, it was a looser hand, as if not to write so much on the same sheet of paper.

Of what age is Mr. Justice Johnson?—Oh, sir, he is upwards of fifty, or about fifty. When I knew him first, I am sure he must be a man of thirty; I knew him first when he was acquainted with the marquis of Downshire: it was there I knew him first.

Mr. *Joshua Nunn* sworn.—Examined by Mr. *Abbott*.

Will you state what you are, Mr. Nunn, what is your situation?—My situation is that of second remembrancer of the court of Exchequer; I am one of the deputies there, and one of the secondaries there.

Are you acquainted, sir, with Mr. Justice Johnson?—Yes, I am.

How long have you known him?—I have known him since the year 1792.

Have you ever seen him write, sir?—I have. Frequently?—Yes, frequently.

Are you acquainted with the character of his hand-writing?—Yes, sir.

Will you look at that [showing to the witness the letter of the 29th of October] have you seen that before?—I have, sir.

Have you examined it?—I did, sir.

Tell me whether you believe that to be in the hand-writing of Mr. Justice Johnson?—I do believe this to be of the hand-writing of Mr. Justice Johnson; that is, the body of it. There may be some alterations in it, which I cannot exactly swear to.

Will you point out those which you consider as not being his hand-writing?—The words "as its," I cannot say to be his. There seems here, at the bottom also, something which is not his.

Will you read that at the bottom which you think not his?—"For the introductory letter see page 586; and, for the second letter, see page"—[The witness then looking at another paper].

Have you seen that before?—I have, sir.

Did you examine it?—I have.

Carefully?—I did.

Do you believe that to be the hand-writing of Mr. Justice Johnson?—I do, sir.

You say you believe it to be his hand-writing; do you observe in it any alteration not his?—Yes: "affairs of Ireland," at the head, "third letter" also, I think are not of his hand-writing.

Lord *Ellenborough*.—Mr. Ormsby speaks to both of the letters?

Mr. *Garrow*.—He does, my lord.

Lord *Ellenborough*.—Mr. Ormsby, do you speak of both as being of the hand-writing of Mr. Justice Johnson?—Yes, I do, my lord.

Mr. *Joshua Nunn* cross-examined by Mr. *Richardson*.

Are you still clerk to the commissioners of the revenue?—No, I am not.

How long since have you ceased to be?—Since the year 1794.

What situation are you in now?—Deputy of lord Donoughmore in the court of Exchequer, and one of the secondaries of the second remembrancer.

You have not seen the defendant write for some years, have you?—Not since he was made a judge.

I think you said you left this office in the year 1799?—No, I did not.

You have not seen the defendant write since he was made a judge?—I do not recollect that I have.

Mr. *John Edwards* sworn.—Examined by Mr. *Attorney General*.

Mr. Edwards, I believe you are an attorney?—I am.



Were you at any time clerk in Mr. Waller's office?—I was in Mr. Carr's.

What was he?—He was solicitor to the land department of the revenue; the excise department, which is called the land department there.

Was Mr. Justice Johnson's situation, as counsel to the board, a part of the inland department of the revenue?—It was, Sir: he transacts business in both.

How long were you clerk to Mr. Carr in that department?—I was articled as a clerk to him in the year 1794, and continued until the time of his death in 1802. I served an apprenticeship to Mr. Carr.

Mr. Carr is dead, you say?—He is.

Had you frequent opportunities of seeing the writing of Mr. Justice Johnson?—I had, frequently.

Can you form any judgment of a paper being his hand-writing or not, when you see it?—I suppose I could.

Look at that paper [showing him one of them] What is the date of that?—29th October, 1803.

Look at the body of that paper, and tell us whether you know whose hand-writing it is? Have you had an opportunity of looking at it before?—I saw this paper, I think it was this day week [looking at the paper.]

Do you believe it to be his hand-writing?—I do, sir. From the best opinion I can form, I believe it to be Mr. Justice Johnson's hand-writing; I saw the paper on Saturday and Sunday last.

You did not attend here, sir, on the bill before the grand jury?—No, sir, I did not—[The witness then looked at the other paper.]

Seeing the general character of the hand-writing, do you speak to that also?—I see there are some words interlined, which I cannot believe to be his hand-writing.

Whose hand-writing do you conceive the general body of it to be?—I conceive it to be the hand-writing of Mr. Justice Johnson, according to the best opinion I can form of it.

Mr. John Edwards cross-examined by Mr. Adam.

Of what age were you when you went to Mr. Carr's office?—I think about sixteen years.

You have not had an opportunity of seeing Mr. Justice Johnson's writing, or examining any of his correspondence or hand-writing since 1801?—No, sir.

You know Mr. Justice Johnson, of course?—I do.

Do you know of what age he is?—I cannot say; he is an elderly man.

Is he not very infirm?—Yes, he is very infirm.

I understand he was very ill lately?—Some time ago in Ireland, I understood he was very ill.

Mr. Carr's office was an office connected with the revenue?—Yes.

And while you were in Mr. Carr's office, did Mr. Justice Johnson visit there at all?—Several times.

Lord *Ellenborough*.—What situation of life are you in now?—I succeeded Mr. Carr as solicitor to the revenue, my lord.

Mr. *Adam*.—That you have told us already; you were not examined before the grand jury, and you never saw this writing until within a week ago. When were you subpoenaed?—Last Saturday week.

For the first time?—For the first time.

Mr. *Attorney General* to defendant's counsel.—I suppose you do not put us to prove that my lord Redesdale was lord chancellor of Ireland at the time of this publication?

Mr. *Park*.—You should not put us into an unpleasant situation, by making us appear to object to what every body knows to be true; but you had better pursue your course without appealing to us.

Mr. *Solicitor General*.—Now, my lords, to satisfy the averments on the record, we are going to prove that these gentlemen named on the record, and who are the objects of these libels, held the offices which they are stated to hold, and that the innuendoes apply to them.

Mr. *Charles Crow* sworn.—Examined by Mr. *Solicitor General*.

You come from Ireland, do you not?—Yes. You were there in the year 1803, I believe?—I was.

In the secretary of state's office?—I was, in October and November in that year.

Was lord Hardwicke lord lieutenant?—He was.

Was lord Redesdale lord chancellor then?—He was.

And Mr. Marsden in the secretary of state's office?—He was, sir.

Was Mr. Justice Osborne a judge then?—He was, sir, one of the judges of the court of King's-bench there.

Lord *Ellenborough*.—What was Mr. Marsden?—He was under secretary of state, my lord.

Mr. *Solicitor General*.—Have you looked at these letters, the printed letters?—I have.

Whom do you understand the *Cambridgeshire Earl* to mean?—Lord Hardwicke.

Whom do you understand by the *Chancery pleader*?—Lord Redesdale.

And Mr. Marsden?—Mr. Alexander Marsden.

Mr. *Attorney General*.—Now, if your lordships please, we propose to read the libel.

Mr. *Adam* asked the attorney-general if he had closed the evidence for the prosecution.

Mr. *Attorney General*.—We give no more evidence now.

Mr. *Adam*.—Have you closed your evidence?

Mr. *Attorney General*.—We give no more evidence now.

Mr. *Adam*.—It is my duty, my lords, in



this stage of the case, to submit to your lordships, that in the state in which the proof stands, the libel has not been published by the defendant in Middlesex.

Mr. Attorney-General, in his address to the jury, seemed to foresee this objection; and he attempted, as it were, to intimidate us who are counsel for Mr. Justice Johnson, from taking it. My lords, we are here to do our duty, and I cannot admit that counsel for a defendant in a criminal case, whatever the rank or situation of that defendant may be, are to be fettered in the exercise of their discretion, from taking any ground of defence which the law of the country affords. I am sure therefore that I shall have the patient attention of the Court (in a case of such importance, and where there is such a defendant), while I endeavour to lay before them the principles and the authority on which I rest; and I know that it will not be supposed that, because I take this preliminary objection, I have not a good defence upon the real merits of the case.

My lords, in exercising this discretion in the case of Mr. Justice Johnson, I am only placing him in the situation of those, whose characters stand as pure and eminent as any that adorn the annals of this country, at the most important, and ultimately the most fortunate period of our history; when the manly and triumphant exertions of the best patriots established the liberty of their country. Your lordships, who are well acquainted with the history of the laws and constitution, must already perceive, that I refer to the case of the Seven Bishops. Upon the authority of that case I mean to contend, that here is no publication by this defendant of the libel in question proved I might say any where, but I mean to confine it to this, that there is no publication by the defendant proved in the county of Middlesex.

My lords, the attorney-general seems to draw a distinction between county and kingdom; but I contend for none such. He said that the defendant would attempt to say, that which was criminal if done in Surrey, was not so if done in Dublin. But I say, the question is, whether it is proved to have been done in Middlesex, where it is laid to have been done. In the case of the Seven Bishops, the act of writing was in Surrey; but what was required to be proved, was an act of publication in Middlesex.

That proceeds upon this principle, that all crimes are in their nature local; that they must be averred to have been done in a particular place, and if not proved to have been done in that place, the crime is not proved to have been committed at all. Certainty, safety, the nature of human actions, all combine to fix this rule.

In order to lay this matter clearly before your lordships, I will first show your lordships what was proved in the case of the Seven Bishops; I will next point out what was ruled

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in that case; and applying the principle which the case inculcates, I trust I shall satisfy your lordships, that under the facts of this case, we are entitled to your lordships' judgment, that there has not been any proof of publication in Middlesex by Mr. Justice Johnson, *to go to the jury*; but, that the attorney-general having failed in that proof, the prosecution must end here, and the defendant go forth acquitted.

In the trial of the Seven Bishops, which I hold in my hand (the edition from which I speak, is that which had the sanction of the name of that eminent judge, Mr. Justice John Powell; it is the same that is to be found in Mr. Hargrave's edition of the State Trials, vol. iv, page 308), it appears that there was considerable difficulty in proving the handwriting of all the bishops to the petition to the king. The prosecutors therefore called Mr. Blathwayte as a witness, who was to prove an acknowledgment at the privy council.

Mr. Blathwayte says (p. 171, of the trial), "I believe this to be the paper that my lord archbishop did own to be subscribed by him."\*

Mr. Solicitor-general, says, "Where was it owned? because we would obviate the objection of the county."†

Your lordships will observe then, that the counsel for the crown in the case of the Bishops, put it, that *acknowledgment* in Middlesex proved *publication* in Middlesex, and that is what is meant "by obviating the objection of the county."

Mr. Blathwayte's answer to the solicitor-general's question is, "they owned it at the council table, Whitehall. All the bishops owned it." Here then your lordships will observe, that there was the highest of all proof, that the bishops were the authors of the petition; that it was proved by their own admission, and by that admission made in Middlesex.

In the sequel, and from the cross-examination by the bishops' counsel, it appears clear, that the single point agitated was, whether this amounted to proof of a publication.

In page 181, Mr. Blathwayte says, "The first time (as I said before), my lords the bishops were unwilling to own the papers, and did say, they humbly hoped his majesty would not take advantage against them, but that they were ready to obey his command. The second time they were called in, they did repeat it again, that they hoped his majesty would not take advantage against them; after that there was mention made of the paper being published. I remember my lords the bishops said, they had not published it."‡ Then in page 192, Mr. Attorney-General asks Mr. B. this question: "Did my lord archbishop own it to be his hand-writing?"

\* 12 Howell's State Trials, 308.

† Ibid, 309.

‡ Ibid, 314.



Mr. B. "Yes, he did, and said he writ it with his own hand, and would not let his clerk write it."\*

(P. 193). The Solicitor-General says,—  
"Then, my lord, we now pray that we may read it."

Mr. Finch.—"If your lordship pleases to favour me one word, I think it cannot yet be read; and my objection is this:—"

Lord Chief Justice.—"I thought you had made all your objections before, as to the reading of it."

Mr. Finch.—"Pray, my lord, spare us: here are two parts of this information; the one is for consulting and conspiring to diminish the king's royal prerogative; and for that end they did make and write a seditious libel: the other part is, that they did publish a seditious libel. We are hitherto upon the first part, the making and writing of it; both parts are local: until they have proved the making and writing of it to have been in Middlesex, it is not evidence upon this information."

Mr. Solicitor General.—"We have proved it written and published in Middlesex."†

In page 198, Mr. Finch says, "My lord, in short, we say, that hitherto they have totally failed: for they have not proved any fact done by us in Middlesex, nor have they proved any publication at all."‡ This then raises the precise question, how far there is any publication in the county of Middlesex *to go to the jury*; and that question is founded on these facts: 1st, That there was a publication, for the paper appeared in council, coming from the king. 2nd. That it was addressed, and intended to be presented to the king. Lastly, that it was owned in Middlesex by the defendants.

After a great deal of argument upon the question, the lord chief justice (in page 221) says, "the Court is of opinion, that its coming to the king is publishing."

Mr. Justice Powell.—"Aye, my lord, if it be proved to be done by them."§

By which the real question is put in issue, whether in fact there is proof of the publication being by their act or agency, or of its coming from them.

In page 222, one of the counsel for the prosecution says, "after it comes into Middlesex it must be taken by presumption, to be subscribed and published by them there."

Lord Chief Justice.—"No; we ought not to do any thing by presumption here."

Mr. Justice Powell.—"No, by no means, we must not go by presumptions, but proofs."

Lord Chief Justice.—"I will not presume it to be made in Middlesex."||

And in page 230, the Chief Justice says,

\* 12 Howell's State Trials, 316.

† Ibid.

‡ Ibid, 319.

§ Ibid, 335.

|| Ibid, 336.

"Mr. Finch, you may observe (and I am sure you do observe as well as any body in all cases) but, I say, you may observe, that they are off of every thing but causing it to be published; now that does lie upon the king's counsel to prove, that my lords the bishops did cause it to be published, FOR THEIR OWN-ING OF THEIR HANDS DOES NOT AMOUNT TO A PUBLICATION."\*

Then, after more argument, the solicitor-general concludes his observations thus:

"Say they, it is agreed to be published in Middlesex; but it is not proved to be published by us."

Lord Chief Justice.—"No, they do not say so; they agree it was in Middlesex, but not published."

Mr. Justice Powell.—"Mr. Solicitor, they do agree it was in Middlesex, but not published, to be sure, nor by them."

Lord Chief Justice.—"Mr. Solicitor, I'll tell you what they stand upon: they say you ought to prove it to be delivered to the king by the bishops, or somebody employed by them; for upon that went the resolution that was in Williams's case, that he sent it to the king; but here is no body that proves it was delivered to the king in this case; so that, how it came to the king *non constat*."†

It is clear, then, that the question for the Court was this, whether they had proved a direct act of publication in Middlesex by the defendant, or given evidence which amounted to publication there, or led to that inference. The doctrine contended for was, that the most manifest intention to publish was not publication; that, on the contrary, all that was admitted, and the authorship proved, but to make good the publication in the particular place—a matter essential to establish the crime, and therefore necessary—in order to make out such proof of the publication as ought to go to the jury, it was necessary to make out a direct act of publication; and the final judgment of the Court upon this point, and to this effect, is given in page 235.

Lord Chief Justice.—"I will ask my brothers their opinion; but I must deal truly with you, I think it is not evidence against my lords the bishops."

Mr. Justice Holloway.—"Truly, I think you have failed in your information: you have not proved any thing against my lords the bishops in the county of Middlesex, and therefore the jury must find them not guilty."

Mr. Attorney General.—"I will put you but one case, my lords. A man has an opportunity secretly to deliver a libel into the king's hands, when nobody is by; and so there can be no proof of the delivery."

Mr. Justice Powell.—"It is a dangerous thing, Mr. Attorney, on the other side, to convict people of crimes without proof."

Mr. Attorney General.—"But shall a man

\* 12 Howell's State Trials, 340.

† 12 Howell's State Trials, 342.



be permitted thus to affront the king, and there be no way to punish it?"

Lord Chief Justice.—“Yes, there will sure; but it will be a very strange thing, if we should go and presume that these lords did it, when there is no sort of evidence of it: it is that which I do assure you I cannot do. We must proceed according to evidence, and forms and methods of law.”\*

So the Court decided, that there was no evidence of publication to go to the jury.

There cannot be a doubt, then, that the principle inculcated by this decision is, that the most distinct and unanswerable proof of authorship, the most manifest *intention to publish*,—that those two things, the writing proved, and the intention to publish proved in the very county, are not considered as acts of publication by the defendants in the county. But that it is necessary to go farther, and to prove an act carrying that intention into execution, and this upon the soundest principles of substantial justice, because, an unexecuted intention is no crime; because, to constitute the crime, there must be proof of the intention being carried into effect in a particular place, viz. in the place charged, for in the language of the chief justice, how it came to the king *non constat*.

Accordingly, after much delay, lord Sunderland came into the court in order to cure this defect in the evidence. I will not detain your lordships with reading his evidence. I can state the substance of it with accuracy. Lord Sunderland proved that two of the bishops came to his office; that they had the petition with them; that they desired him to say which was the best way of delivering it to the king; that they desired him to read it, which he declined, but said that he would acquaint the king with their desire, which he did; and the king commanded him to say, they might come when they pleased. He then went back and told them so; on which they went and fetched the bishops. When they all came, they went into the bed-chamber, and then into the other room, where the king was.

By this testimony the intention was proved to be executed, or a presumption raised that they had published the libel in Middlesex, by delivery to the king.

But in the case now under consideration, there is no proof whatever to establish that Mr. Justice Johnson published the libel, or caused it to be published in Middlesex. I do not mean to contend, that personal presence is necessary to prove publication; it is, no doubt, clear, that a person may publish by transmitting the libel to the place of publication; but I contend that there is not any act of transmission by the defendant proved in this case. The libel appears to have been written in Dublin, and Mr. Justice Johnson resident in Dublin—

Mr. Justice Lawrence.—To maintain your argument, you must admit that he wrote it.

Mr. Adam.—I do not admit that as a fact; I shall prove the contrary; but I admit, for the sake of this argument, that there is at present, *prima facie* evidence that he wrote it.

Now, my lords, admitting that, still there are ten thousand persons in Dublin who might have sent it to England; and observe how the evidence stands—Mr. Cobbett has proved that the papers signed *Juvena*, came in an envelope; the loss of which has been thought sufficiently proved at present, to admit parole testimony of what was upon it. Mr. Cobbett proves that the Dublin post-mark was upon it. Now that does not establish it to have been put in by the defendant, by whomsoever it was put into the post-office at Dublin, it would equally have had the Dublin post-mark. Mr. Cobbett gives no proof of the hand-writing on the envelope; it is not proved to be the defendant's; he does not prove that he received it by the usual course of the post, but that it came to him from Mr. Budd; not brought by Mr. Budd, but by another person, and he does not know who that person was; so that the transmission is completely disconnected with a post-office delivery, and not entitled to any of the presumptions arising from the course of that office; and if it were, it is not connected with the defendant by any mark which establishes it to have been transmitted by him. Admitting, for *argument*, that it was composed by him, and that it lay in his bureau, it may have been stolen from thence, and transmitted by another, and have appeared equally to have been his transmission. Granting that he not only wrote it, but that he intended to have published it; that it appeared from the paper itself that it was intended *by him* that he should send it for publication, still, until the act of sending is proved, it rests merely in intention, and the case of the Seven Bishops has established, that the most manifest intention to publish is not sufficient. In that case there was a manifest intention apparent by the acts of the parties, and by the paper itself, to publish, and this was all connected by what passed at the privy council, and by the paper being produced there by other persons than the bishops, to have been in Middlesex; a publication, too was proved in Middlesex, but all this was held not enough. It must be proved that the bishops had performed the act of publication, and the intention to do so, however plain, was not enough, as it would be making the intention to commit the crime equal to the commission of it. So in this case, where all proof of an act of publication, or procuring the publication, is wanting, there is no act of transmission brought home to the defendant; there was a fact of publication proved, that is, proof that the paper was sent to Mr. Cobbett, in Middlesex, but in the language of the lord chief justice, in the case of the Seven Bishops—from whom it came to him *non constat*. That is the point to be proved in this case: it is not proved from whom it came; it is not

\* 12 Howell's State Trials, 343, 344.



proved that it came from the defendant; and therefore there is no publication by the defendant proved in Middlesex, to go to the jury.

This, my lords, I hold to be the inevitable conclusion, applying the principle established by the case of the Seven Bishops to the facts of the case now under consideration, and therefore there must be an acquittal, there being no publication proved for the jury to consider.

Mr. *Park*.—My lords, this is a very serious case to the defendant, for he must take all the consequences after conviction, as if this point had never been submitted to your lordships—

Mr. *Attorney General*.—I believe I can save a great deal of trouble to the Court: the objection, as it seems to me, is premature, for part of the objection now insisted upon, may be done away by the internal evidence of the written document which we propose to read; and the jury may find, that not only this libel was published by Mr. Cobbett, as he has already proved, but it will appear on reading the thing itself, that the defendant desired Mr. Cobbett to publish it in Middlesex; and the difficulty has all arisen from my learned friend's taking an objection to evidence before it is given; which objection will be done away by that very evidence, when given.

Lord *Ellenborough*.—Suppose the defendant had said to Mr. Cobbett, "I desire you to publish this in the county of Middlesex."

Mr. *Erskine*.—My lords, I am persuaded that after the paper is read, your lordships will not hear a word of objection to it as evidence.

Mr. *Park*.—I was about submitting to your lordships, that I feel myself bound to admit the fact of Mr. Cobbett's publication in Middlesex, and also, for the sake of the argument (although afterwards we shall show the contrary in evidence), I shall admit the manuscript to be of the defendant's hand-writing; but then, I submit to the Court, that before any evidence can go to the jury on this issue (which is, whether any act was done by the defendant in the county of Middlesex or not,) there ought to be some fact established, of Mr. Justice Johnson having actually caused or procured Mr. Cobbett to do this in the county of Middlesex, which cannot be done consistently with the rules of evidence, in the way which the attorney-general proposes; because, if that prevails, every man may be subject to the acts of any other who may have access to his papers; so that what a man may write in his closet, for his own amusement, or for the chance of publication after his death, when party heats and animosities may cease, may burst upon him, by its appearance in the world, when he had no intention it should do so, but had studiously intended to conceal it. Thus, whatever a man writes may make its appearance before the public against the intention of the author.

The Court will understand me as arguing now, as if I were bound to admit that Mr. Justice Johnson wrote this libel in Dublin; doing so with a protest against the fact; but doing it as a foundation for my argument, that he wrote it in Dublin, contemplating, in his closet in Dublin, to send it to Mr. Cobbett to be published in this metropolis, in the county of Middlesex, as stated in this record to have been actually done; but then, I contend, there is no proof of his having sent it. The paper is found in the hands of Mr. Cobbett, who publishes it in his Register; but for any thing that appears (and your lordships are to presume nothing against the accused), another person might have come to the possession of this paper writing, and have sent it to Mr. Cobbett. The case is put by one of the counsel for the Crown in the trial of the Seven Bishops, and he receives an answer by Mr. Justice John Powell, that the publication so contended for will not do, for that proof of an act done in Surrey, does not lead to any conclusion of another being done in Middlesex by the same party, although it be done by somebody. If I send a letter from the county of Surrey to the county of Middlesex, or procure it to be sent there, it is evidence against me as to what was done by another with that letter in Middlesex. There is not a question upon that, for if it was a letter in the hand-writing of Mr. Justice Johnson, and sent by him from Dublin to be published in Middlesex, that is a publication by Mr. Justice Johnson in Middlesex; but that is not the present case, upon the evidence now before the Court; for supposing, as I have always done, for the sake of the argument, that the letter is of the hand-writing of Mr. Justice Johnson, your lordships are left without any proof whatever of his having taken any step, in Dublin, towards sending it to England to be published; for any thing that appears, some other person may have had access to his escrutoire, and possessed himself of this paper; and, without the defendant's knowledge, sent it to Mr. Cobbett to be published here; and that, I submit, is the fair presumption, until they prove the hand-writing of Mr. Justice Johnson to the envelope, which they not only have not done, but which they have not even rendered probable.

Lord *Ellenborough*.—You contend, that it must not only appear that the defendant wrote the envelope, but that they must also prove it was transmitted by him to this country.

Mr. *Park*.—Yes, my lords, then there would be a case to go to the jury; but here we have no fact done by the defendant in the county of Middlesex, nor any act done in Dublin to further the letter from thence to the county of Middlesex. Thus, for instance, the writing a letter in the county of York, is no proof of the publication of it in the county of York. This is like the case of Algernon Sidney: papers were found in his study, and, because they were there found, he was convicted



as for publishing them. But so repugnant was that determination to the principles of our law and natural justice, that the determination was afterwards annulled by act of parliament.

Lord *Ellenborough*.—And if this paper-writing had only been found in the *study* of Mr. Justice Johnson, he never could be convicted for a libel.

Mr. *Park*.—My lords, I am anxious to discharge, as well as I am able, my duty towards my client; and I will not, unnecessarily, take up your lordships' time; but really there does seem to me to be a great deal in this point. It is admitted then, that if this paper had been only found in the defendant's study, they could not give it in evidence against him; now I contend that the present is no more than that case; for, supposing he were the author of this paper, then it would, upon this evidence, amount to no more than that the defendant was amusing himself, in his study in Dublin, but without intention of publishing in England the subject of his thoughts in private. I say, my lords, it can amount to no more than this, unless they were to lay before your lordships some *act of transmission* from Ireland to this country; and for that reason, I really do not see how this case can be distinguished from the case of Algernon Sidney; for upon this evidence, supposing the paper to be of the defendant's hand-writing, there is no proof it ever went from the defendant's desk by any act of the defendant. I submit also, that this is the same case as that of the Seven Bishops. The archbishop of Canterbury had never before been out of his palace at Lambeth, but a learned judge was of opinion, that, as the petition was signed at Lambeth, and as it was owned by the bishops that they intended to present it to the king, the presumption was, that as the king's council was held in Middlesex, and as the bishops asked an audience of the king, and the petition was afterwards seen in the king's hand, it was delivered to the king in Middlesex. But the judges held, that owning it in Middlesex was not sufficient; that the prosecutor must go farther, in order to connect the bishops with the act of publication in Middlesex, which was the charge against them in that prosecution; and Mr. Justice John Powell, a judge as much respected for his learning, and esteemed for his integrity, and of as high an authority in the law, as any learned judge of his day in Westminster-hall, was of this opinion. And in answer to the case which was put by Mr. Justice Lawrence, I would say, if a man were to put a letter in the post in Exeter, you must prove his hand-writing in that county; and his putting it in the post there, directed to a person in Middlesex, may be a circumstance to go to the jury to consider, whether he was not connected with the publication afterwards in Middlesex; but without it, and on mere proof of the hand-writing in Exeter, such a person could never be convicted of a libel

published in Middlesex, although he might be convicted as the author of it in Exeter, or in the county of Devon. So here, my lords, if this learned judge wrote this paper, and did any act upon it afterwards, he might have been convicted for it in Dublin, as far as I know; but Mr. Cobbett does not appear to have received it from Mr. Justice Johnson; the envelope is *not* proved to be of his hand-writing; it is *not* proved to have been put into the post in Ireland by him, nor is there one act proved to have been done by him in Ireland towards its publication; there is, therefore, I submit to your lordships, a chasm in the evidence.

The first paper, your lordships will observe, comes to Mr. Cobbett from Mr. Budd, in an open cover; that cover is *not produced*, but it is *said* to be *destroyed*, and *parole* evidence was, therefore, admitted, to give an account of it, and the account only is, that it is destroyed, as the witness *believes*; no proof is attempted to be given of its being of the hand-writing of the defendant. Mr. Cobbett only tells us it had the Dublin post-mark upon it, and that he received it opened from Mr. Budd; Mr. Budd is not called; Mr. Budd sends this paper by a messenger to Mr. Cobbett; that messenger is not called as a witness. In order to make out that this paper was sent by this defendant from Dublin to Mr. Cobbett in Middlesex, it should appear, *that the defendant did something towards its transmission*; something done by him in Dublin should be shown, as his putting it into an envelope there, or something of that kind; some act should be proved to have been done in his personal presence, or the envelope should be proved to be of his hand-writing. We are here upon a libel published in the county of Middlesex by Mr. Cobbett, said to have been written and sent by Mr. Justice Johnson to Mr. Cobbett, to be published by him in the county of Middlesex. All the evidence which has been given in support of the charge, has been confined entirely to that of Mr. Justice Johnson being *the author*. Nothing is proved concerning the *animus*—the intention of the learned judge in Ireland, about publishing it here. Supposing him to have written the libel in Ireland, and to have done no more, he cannot be guilty of that which is imputed to him upon this record, namely, of having "caused the libel to be published in the county of Middlesex:" not only is there no evidence of the fact, but there is no evidence that the learned judge had any such intention.

Mr. *Lockhart*.—I humbly submit to your lordships, that a particular averment, of which I say there is no proof, ought to receive as material support in evidence, as any other averment upon the record, however essential to the substance of the prosecution; for the law of evidence is as much alive to the protection of innocence, as to the detection of guilt. The very inference which your lordships are called upon to make in this prosecution, was reject-



ed on the trial of the Seven Bishops, to which case I would humbly beg leave to call the attention of the Court; which your lordships know was the case of a libel as well as the present, and which your lordships well know too, was a petition to the king, containing internal evidence of its object, which was to pray the king, that his majesty would not insist on enforcing his command on the petitioners. It was framed in the county of Surrey, by the petitioners; it was presented to the king, and found in his hand in the county of Middlesex. The Bishops were asked whether it was their writing? they acknowledged the manuscript to be their's, and this acknowledgment was made in the county of Middlesex; and yet, my lords, this was held not to be sufficient evidence of an act done by the Bishops in the county of Middlesex, and for what reason? because it was possible, although highly improbable, that some other person might have delivered the petition into the hands of the king. That I apprehend to be the reason, as there appears to be no other—improbable though it was, that any other person should have presented that petition—on which it was held there was not sufficient proof of any act done by the Bishops in the county of Middlesex. I submit to your lordships, that the present is no more than that case. Let us suppose the libel in question to be found in the hands of Mr. Cobbett, brought to him by the post, which is not the fact here; is it not as probable that this libel was sent by any other person to Mr. Cobbett, as by the learned judge who is charged with having done it? I say, my lords, is it not as probable that any other person might have inclosed this libel in a letter to Mr. Cobbett, as that any other person than one of the Seven Bishops delivered that petition to the king? If it be on account of the gross improbability of evidence tending to prove persons guilty, who are in reality innocent, that such evidence is rejected, because of the detriment it may cause to the administration of justice, I say this evidence is unfit to be received to go to the jury against the defendant; because he ought not to be put in peril, but on such evidence as is, by the law of the land, considered sufficient to put him upon his defence. And here I would again call your lordships' attention to the case of the Seven Bishops. When they were asked whether the petition was of their hand-writing or not, they were silent at first, but afterwards they admitted it to be their's, from motives which are well known to all who are acquainted with that part of our history. The petition was found in the hands of the king, in the county of Middlesex; and it was full as probable, in that case, that the bishops presented the petition to the king, as that the present defendant sent this manuscript to Mr. Cobbett; and yet, in that case, the evidence was held insufficient to prove a publication in the county of Middlesex. I submit to your lordships, that this

species of evidence should be held insufficient to go to the jury, because the reception of such evidence may be detrimental to innocence, and because also it might have that effect in this case.

Mr. *Richardson*.—My lords, in this case I will admit there is *prima facie* evidence, that the papers in question are of the hand-writing of the defendant, and that they were found in the hands of Mr. Cobbett, and by him published; but then, as to the *manner* in which they were sent to him, I submit to your lordships the evidence is not sufficient to go to the jury. The first paper, as appears by the testimony of Mr. Cobbett, was brought to him in an *envelope*, by some person, but he knows not whom; or rather from some person, but he knows not whom. There is no evidence whatever to go to the jury, that these papers, thus sworn to be of the hand-writing of the defendant, were in the envelope thus sent;—there is no evidence whatever, that the paper was taken to the post-office in Dublin, which is the first step to be taken towards its transmission from that country into this;—there is no evidence whatever, that they were received in the post-office in this country, except the post-mark which Mr. Cobbett spoke of;—neither is there any evidence of the papers received by Mr. Cobbett, being the same papers that were received in this country from Ireland; for, as to the first paper, it appears that the packet was opened by Mr. Budd, before it was sent by him to Mr. Cobbett; and Mr. Budd does not appear to give evidence. And your lordships are now called on to say, that this shall affect a defendant criminally, without evidence of any thing to connect him with that envelope.

But, in the opinion of Mr. Cobbett, it seems there was the Dublin post-mark on this envelope; I say, my lords, "the opinion of Mr. Cobbett," for I do not think it can be carried farther, especially as Mr. Budd, who first received the packet, does not appear to inform us of the fact. This applies to the first packet. As to the second, it appears that Mr. Cobbett received it in an envelope unopened; but still, I submit to your lordships, there is no evidence to go to the jury in this case, for there is no evidence that any of these papers were received at the post-office; and that the established rule of law, "that of giving the best evidence which the nature of the thing is capable of affording," is not complied with on this occasion; and no presumption is to supply the want of such proof, nor can secondary evidence be received instead of it. They *might* have proved that these letters were received at the post-office in this country, and that they were delivered in the due course of the post to Mr. Budd, and by him delivered to Mr. Cobbett, which would be the best evidence, and which the law requires. Now what evidence is there, that these papers were received from the post-office? None. It is with them to supply that defect, and they



might have done it: they might have proved it by the person who delivers such letters. *Non constat*, therefore, that it was delivered from the post-office. Then it stands thus, that Mr. Cobbett receives in Duke-street, Westminster, two papers, inclosed in some unknown envelope; *non constat* by whom sent, *non constat* by whom received. It is said, by Mr. Budd, but that is not proved; because Mr. Budd himself should have been here to prove that fact. Mr. Cobbett proves that he received them as coming from Mr. Budd; but that they came from Mr. Budd, does not appear, because the messenger who is supposed to bring these packets from Mr. Budd to Mr. Cobbett, is not here. Why then the whole matter rests upon the bare evidence of these letters being of the hand-writing of the defendant.

My lords, the writing itself is stated to be evidence of an intention to publish. Here, my lords, I would beg leave to consider the case of the Seven Bishops: in that case, it was proved that the paper charged to be a libel, was in the hand-writing of the defendants, directed to the king's most excellent majesty.—[Here the learned counsel read the title of the petition of the Seven Bishops to king James the second.]

My lords, that case afforded the very best evidence that can be given, of intention to present a petition to the king; for the bishops were found waiting for the king, expressing a desire to present a petition to his majesty; they were admitted into the royal presence; the petition was afterwards found in the hands of the king; so that there could not possibly be stronger evidence of intention to present a petition than this, nor a greater probability of its being actually presented, which was the only act to be proved to have been done by the Seven Bishops in Middlesex;—surely much stronger than the evidence carries this case, and yet it was there held insufficient to prove an act done in Middlesex. Here the libel is found in a state of publication in Middlesex; but I submit to your lordships, that there is a link wanting in the chain of evidence; which link is to show, that this libel was brought into Middlesex by the agency of this defendant. My lords, I say, that as the paper comes to Mr. Cobbett, nobody can tell, upon the evidence, from whom; therefore there is *no publication, nor any act done by the defendant towards the publication*, for a material link is wanting in the chain of evidence, that of showing that the paper came into the county of Middlesex by the agency of the defendant. That was the deficiency in the evidence on the trial of the Seven Bishops. There was the very best of all possible evidence in that case, as to the *intention* to present the petition to the king; the petition was written in Surrey; the bishops acknowledged it to be theirs; they were charged with having presented it to the king in the county of Middlesex; but there was no evidence of

any one act being done by them in Middlesex, although the *inference* was almost irresistible, that they did present the petition to the king in Middlesex; yet, as there was no *proof* of it, the link was wanting in the chain of evidence, and it was held insufficient. I do beg leave to call your lordships attention to this point, as it appears illustrated by that case; and to remind your lordships, that the period in which the trial of the Seven Bishops took place, was one in which evidence was as favourably received for prosecutions, especially such as were immediately at the instance, and under the direct influence of the crown, as any in the whole of our history; but the want of that link in the chain, as I have already stated, made the Court declare there was not evidence to be sent to the jury.

My lords, as to what was thrown out by one of your lordships, that if a person in one county writes, or causes to be written, a letter to another person, and causes it to be received in another county, and that other publishes that letter, it shall be taken to be a publication by the author of the letter, or the person sending it, in the county in which it is received and published; that I certainly admit; and sir Bartholomew Shower puts that case, and Mr. Justice John Powell answers it. "The law is as the recorder said, and I have no disposition to controvert it." But here is no evidence of any sending, or causing it to be sent; that material link in the chain, which might have been procured, is wanting: it is not proved by the postmark of the letter, if that was any evidence at all; that mark, such as it was, is lost. The officer of the post-office could speak to one of these points. But there is no evidence that the person was in the place from whence the libel came; there is no evidence even, that the defendant was in Dublin at that time; or that he ever sent it to the post-office; or that any such letter was received there. Even the person to whom it was directed is not here; but somebody conveys these papers to Duke-street, Westminster, and all this utterly unconnected with the defendant; I therefore submit, that unless your lordships over-rule the case of the Seven Bishops, this cannot be sufficient to go to the jury.

Lord Ellenborough.—There is nothing in the judgment the Court is about to pronounce on this point that will over-rule,—nothing that will tend to over-rule,—nothing that is meant to over-rule the doctrine laid down in the case of the Seven Bishops. But it is most extraordinary that it has not occurred to any gentleman, that there is no question of the *fact* of publication *here*; for that the act of publication by Mr. Cobbett took place in the county of Middlesex is unquestionable. The only question therefore is, whether the defendant procured that act to be done; for if he did, Mr. Justice Johnson is responsible for the act to which he has been accessory. And although surely much and important evidence



is to be collected from the papers themselves to show whether the defendant applied to Mr. Cobbett to publish them; yet we are now called upon by the defendant's counsel, before we have read these papers for the purpose of seeing whether there has been this procurement or not, to say that there has been no procurement. Whether there was or not such procurement, it will be left to the jury to determine.

As to the case of the Seven Bishops; those most reverend and moral persons were called upon, before they knew that a prosecution was to be commenced, to say whether the petition was their writing; some were supposed to answer in the affirmative, and this being a species of extorted confession, could not avail before a court of justice constituted as that was; whereupon the evidence of lord Sunderland was called forth, on which it was held that there was evidence to go to the jury to determine whether the bishops did in fact deliver the paper to his majesty and solicit his majesty to receive it, and thereby published it in Middlesex. I incline to think that there was then evidence to go to the jury. But what was the paper itself? A libel? No; it was a fair, decent, loyal remonstrance to his majesty, praying that he would be graciously pleased not to enforce his authority in the exercise of an important prerogative of the crown, by commanding these his most reverend subjects to conform to his will by reading his royal proclamation. This petition was indeed called a libel; but was it a libel? No. Where however is the analogy between that case and the present? Here is a paper, which every body admits to be a libel, published in the county of Middlesex; and if the thing be, as undoubtedly it is, a libel, the only question is, whether the defendant procured it to be published in the county of Middlesex. I will not observe on the communication which took place, by letter, previously inquiring how the future correspondence should be directed, and even how the writer should subscribe his own communications. I think there may be, as the attorney-general has stated (and he would not mislead the Court, by stating that to be in the libel which is not to be found in it), internal evidence of the fact now in question, which would be manifested by the reading of the papers; so that if we were to refuse admitting this as evidence to go to the jury, we should be defeating the ends of public justice.

The question is, whether Mr. Cobbett published this libel by the procurement of the defendant? if he did, the offence is established; for, by the law of the land, the publication is as much the act of the person who procures it to be done, as it is the act of him who does it. God forbid that we should violate any of the sound principles of the case of the Seven Bishops, or of any other on which the rights and liberties of the subjects of this country so much depend. We are not violating any prin-

ciple whatever of law or justice, or the practice of courts of justice; we are proceeding in the fair open path of our public duty, by receiving, and therefore we ought to receive this evidence, and lay it before the jury for their consideration.

Mr. Justice Grose.—I am of the same opinion.

Mr. Justice Lawrence.—I am also of the same opinion. The case of the Seven Bishops bears no analogy to this. They were prosecuted for a petition which was presented to the king; which petition it was thought fit in those days to call a libel; it was framed in Lambeth-palace, and delivered to the king, but where delivered to the king did not appear; and in order to fix a delivery to the king in the county of Middlesex, inferences were attempted to be drawn; but *hand-writing* in the county of Surrey, was all that was *proved*, or rather that an admission of it was made by some of the bishops in Middlesex; now it would be extraordinary that a hand-writing admitted in a county, could be taken as proof of publication in that county; and that was all the proof in that case, except that of one of them having the petition in his hand when he asked an audience of the king in council, in the county of Middlesex; it was charged to be a publication in the county of Middlesex, of which there was not one tittle of proof—that is a case which, therefore, bears no analogy to this. Here is proof of a publication in the county of Middlesex; proof of that paper having come to the hands of Mr. Cobbett, in the county of Middlesex; and the question is, whether or not this defendant sent it to Mr. Cobbett. Mr. Cobbett having received previous letters, inquiring whether or not it would be agreeable to him to have communications of this sort, and there having been an advertisement in his Register, stating in answer that it would be so, Mr. Cobbett then receives, in the hand-writing (as it stands at present) of the defendant Mr. Justice Johnson, these manuscripts. Whether the paper so received be or be not of the hand-writing of the defendant? Whether or not, it was sent by the defendant, or by another person? are questions surely for the jury to exercise their judgment upon. How they will exercise that judgment is another matter.

Mr. Justice Le Blanc.—I am of the same opinion. Previous communication in the county of Middlesex, from whom is not now the question, but previous communication is proved to have taken place with the witness Cobbett; desiring to know, whether letters respecting the public affairs of Ireland, would be acceptable to him? and if so, whither they should be sent? to which a public communication is made by way of answer, stating whither they are to be sent, which is followed by the reception of the letters now before us; the letter itself (I do not speak of the direction), stands at present proved to be in the hand-writing of the defendant. It is objected



that there is no proof that these letters came by the post, or by what means they came; whether they came by the post, or by a private hand, stands at present subject to answer and observation; but they appear upon the evidence at present before us, to be of the handwriting of the defendant; and, supposing them to be so, it is to be collected by the jury, and by them determined, whether they were delivered in the county of Middlesex to Mr. Cobbett, with intention to be published or not? I cannot entertain a doubt, that that is evidence to be sent to a jury: what conclusion they will draw, is another question. In the case of the Seven Bishops, the publication was not proved; it was admitted by some of them, that they were the authors of the petition to the king, but proof of the publication was wanting.

[Here the libels were read from the manuscript, by one of the officers of the crown, and the ingrossed indictment compared with it by the other, in which there were a few trivial errors, but none of a nature to invalidate it; adding a short postscript not printed, to one of the letters, where all the blood was supposed to be drawn to the heart of the empire, and the extremities were cold, &c.]

Mr. *Garrow*.—I have a question or two to put to Mr. Cobbett, if you will give me leave, my lords.

Mr. Cobbett re-examined by Mr. *Garrow*.

You have stated to the Court and the jury, that the first communication you received on the subject has been destroyed?—The letter has not been destroyed, the greater part of it was published in the Register some time before the second was published.

Mr. *Garrow*.—You are not attending to my question?—Yes, I am sir; part of it was omitted.

Did that letter give you any intimation of the manner in which your correspondent wished you should announce your receipt of his communication, and accession to his future correspondence?—He asked me whether it would be agreeable to me to receive true and useful information respecting that country; if it would be agreeable to me, he desired me to say so, in the next number of the Register which should be published after the receipt of his letter.

In what manner were you to say it in your next number?—In order that the people of the post-office in Ireland might not intercept his letters, he requested me to address him, or to give a hint, as if the correspondent lived at York, which I did accordingly.

Is this your next number in which you did give the hint, as if your correspondent did live at York?—I believe that is the one in which I gave the hint, in which I did give the intimation "the York correspondent will find his answer, &c."

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Mr. *Adam*.—How is this evidence, my lords?

Mr. *Garrow*.—In consequence of this, a second and a third were published?—After the first, it was stated in the Register, "the York correspondent will find his answer at Mr. Budd's, No. 100, Pall-mall."

In consequence of this, other letters were sent to Mr. Budd?—Yes.

Mr. Cobbett cross-examined a second time by Mr. *Adam*.

You have been talking of the first letter?—Yes.

Do you mean to say that letter is destroyed?—Yes.

How do you know?—I do not believe it is in existence at any rate. I will explain why; I sent the manuscript to the press, there it is with the printer, if not destroyed; sometimes a manuscript is destroyed, and sometimes it is not destroyed. Two of these letters, and only these two, I believe, remained. I do not know whether the fourth did not remain; the fourth remained, I believe, since the prosecution commenced; the fourth was not complained of by any body, but the first letter was destroyed by the printer or by me.

Did you see it destroyed?—No, I have not; when I came to look at these two papers, and I think the fourth, they were kept; and the others, thinking them of no consequence, were all destroyed.

The first letter, you say, was sent to the printer, and you have never seen it since?—I do not know whether he destroyed it, or I destroyed it myself.

Lord *Ellenborough*.—If it existed, it would have been returned to you?—Yes, sometimes they are sent back, sometimes not sent back; for if the proof is sent to the printer, the copy is sent back.

Mr. *Adam*.—But the last time you saw it, was when you found it at the printer's?—I do not know.

Have you been to look for it at the printer's office?—No.

Mr. Justice *Le Blanc*.—The first letter never was printed, introductory of the correspondence? ask him that, Mr. Adam.

Mr. *Adam*.—It is in the publication, my lord.

Mr. *Park*.—That which appears upon the face of things here, would seem to be first, but in point of fact, it was published the second.

Mr. Justice *Le Blanc*.—I want to know whether that introductory letter to the correspondence was ever printed?

Lord *Ellenborough*.—Stating, "If agreeable to you to receive true and useful information," and desiring it to be published.

Mr. *Garrow*.—That, of course, could not be published.

Mr. *Adam*.—Was part of that letter published?—Yes; but that part, which related to the mode of transmitting was not, of course;



because it was of no use to any body, but to the author and myself.

Look whether that is not a portion of that letter which you published?—Yes, and it is stated so here in the note.

Was the letter you received sent to the printer?—That letter was, with the part relating to the correspondence left out, which I considered as of no use; the whole was sent to the printer, all but that part.

Have you ever received it back from the printer?—I do not know; from the irregular manner of the course of business, it is impossible I should know.

Have you ever been to the printer's for it?—No.

Lord *Ellenborough*.—The probability is, he would not send it back again.

Mr. *Adam*.—They ought to have called the printer to prove it destroyed.

Mr. Justice *Lawrence*.—You mean that the first part was sent to the printer's. Cobbett says it was not.

Mr. *Adam*.—The original of it was only struck through with a pen.—[to Mr. Cobbett.] Do you say struck through with a pen?—As a mark of what they were not to print.

Do you know whether that was received back?—It is impossible for me to know; it is impossible for any one concerned in printing to know.

Mr. *Adam*.—I submit that this is not evidence of the destruction of it, and that they should show the original.

Mr. *Park*.—They give it to the printer with all the parts of the letter, some of which are struck through with a pen; the witness says that he sent it to the printer, and that he never saw it again, but that he never searched for it; I submit to your lordships, that the proof is defective in this case, for that they ought to have called the printer, to show that he had, or had not, destroyed the letters, or to show that he had searched for, and could not find it; and that this evidence should be completely before us, before this case can go to the jury.

Lord *Ellenborough*.—I think he says it was the usual course for letters to come back to him, but this paper did not; that he searched where it was most probable to be found, and that he could not find it; he found the others; which shows that the *escrutoire* or *bureau* wherein he searched, was the natural place for the custody of such papers, because it is the place wherein he found all the rest.

Mr. *Adam*.—Your lordships will think it right that we should suggest to the Court our objection on the ground of the defectiveness of this evidence; that the admission of it, and its being held sufficient to go to the jury, may remain in your minds, your lordships will take a note of it.

Mr. Justice *Le Blanc*.—The better way will be to take Cobbett's evidence down, for the purpose of deciding on the question, whether it ought to go to the jury.

Mr. *Adam*.—The short objection is, that there is no proof of a search having been made at the printer's office, to decide that it is lost, in order to let in secondary evidence, instead of producing the paper itself.

Mr. Justice *Le Blanc*.—No proof of any search ever having taken place at the printer's office. Mr. Cobbett, the fact is, you never searched at the printer's?—No, my lord, only where I found the others.

Mr. Justice *Lawrence*.—Is it usual, in the course of business, for printers to preserve such manuscripts?—No, my lord; after the printing is done, they throw it into a large place, and it is destroyed of course.

Mr. *Garrow*.—What the printers do preserve they send back to you?

Mr. *Attorney General*.—What they do not themselves destroy?

*Witness*.—What they do not destroy, they send back to me.

Mr. *Park*.—Will your lordship be pleased to ask Mr. Cobbett, whether it is not very usual for printers to file the papers which they do not send back.

Lord *Ellenborough*.—Is it usual for the printer to file papers which he does not send back?—With some printers, and for certain works, they may, for aught I know; but for mine, it never was the custom.

Mr. *Garrow*.—We now propose to read the Dublin Gazette of the 29th of April 1802, to show that my lord Redesdale took the oaths of his office.

Mr. *Park*.—We will first ask, by way of form to support our objection, where the printer lives; to show that he is within reach of the process of the Court. Where is your printer's office situated, Mr. Cobbett?—In Great Queen's-street, Lincoln's-inn-fields.

Mr. *Attorney General*.—That is our case, my lords.

#### DEFENCE.

Mr. *Adam*.—Gentlemen of the jury; I am now to address you on the part of the defendant;—a most anxious duty, considering the rank and character which he holds, and the offence with which he is charged.

The defendant, you know, is a supreme judge in Ireland. You have already heard, that previous to the Union he had long been a member of the Irish House of Commons, and continued a representative in the parliament of his native country, until the Union put an end to the existence of the legislature of that country. You have heard, that during a great portion of his life he has enjoyed situations of great trust and responsibility in the law, particularly as counsel to the boards of revenue; and it is manifest, that obloquy is as likely to be attached to the discharge of the duties of that station, as to any legal situation under the crown, yet there is not a whisper to the prejudice of his character.

This defendant, then, up to the period of the Union with Ireland, appears to you in



proof as a diligent servant of the state, and member of parliament. Gentlemen, the seal to that great national compact, which united the three kingdoms in one, was hardly cold, when the seal was put to the defendant's patent as a supreme judge, by the advice of the same confidential servants of the Crown, who were the authors of the Union, and who are now the ministers of the king. Gentlemen, is it likely that they would have selected at that time, and under those circumstances, a person whose principles unfitted him for that high and responsible situation, one who was prone to other and to criminal acts, inconsistent with the dignity and probity of the judicial character? or that Mr. Justice Johnson, who in all his former life had been a supporter of the government in parliament, and placed in executive situations of great trust, should, when clothed with the robes of magistracy, advanced in years, and visited with bodily infirmity, become a libeller of the government which elevated him, and a traducer of the fame of those who hold political and professional situations of highest dignity and respect? Such a prosecution against such a person, excites the utmost anxiety in my mind, who have to conduct his defence, and cannot fail to create the most lively interest and deliberate consideration in yours.

Mr. Attorney General has thought proper to enforce his arguments by stating the aggravated nature of the offence, and the characters of those who are libelled. It seemed to me as if he had been misled into those topics by the present appearance of the Court; and to imagine, because he saw four judges instead of one,—the usual constitution of the Court when juries are assembled,—that he was speaking in aggravation of punishment after the party had been convicted, and not in order to obtain the verdict of a jury finding him guilty. But, gentlemen, I do not state this to complain of it; on the contrary, you shall not hear from me that this publication is no libel; it forms no part of my case to extenuate its malignity: I deny that the judge, this defendant, has any connexion with it; I mean to satisfy you by proof that he neither published it, wrote it, nor composed it; consequently, that he has no interest whatever in the character of the thing published.

Gentlemen, I have as little interest in finding fault with the manner in which Mr. Attorney General endeavoured to excite you, by the picture he drew of the persons libelled, and which he did with peculiar elegance and taste, in the character he gave of the noble and learned person with whom he is so nearly connected. All that he said of that noble and learned person, whom we all know and value as he does; all that he said of lord Hardwicke, Mr. Justice Osborne, and Mr. Secretary Marsden, I am ready to adopt and make my own; because the more he exalts their name and reputation, the more he describes the libel to be virulent, the less likely was a per-

son in the exalted station of judge, with the purity belonging to that character, to be guilty of this offence.

Gentlemen, I shall, by proof contradicting that which you have heard, reduce this to a mere question of probability. Whether it is probable that the learned judge could be the author of a libel on such persons, will be the question for you to determine. He could not be moved to such an act by any rational motive of interest, or any vindictive disposition to resentment. If he looked for farther preferment, to whom could he apply but to the lord lieutenant and the chancellor? Mr. Marsden was a person to be courted, not to be offended; and Mr. Justice Osborne being the youngest judge on the bench, much his junior, could not be an object of his jealousy or his malice. It will be your duty, gentlemen, in the consideration of this case, to refer to all these circumstances as the grounds of your verdict. If there are no corroborating facts, and you must observe that there is not one, not one circumstance of collateral evidence tending to connect the defendant with the publication in question, and as there is nothing but the mere proof of hand-writing to induce a belief that this gentleman was the author, I will venture to say that you must acquit.

I wish not to consume more time than my duty requires; but there is still one important subject for preliminary observation. Mr. Attorney General has alluded to the measures taken by the learned judge to prevent this question being tried here, and he has reserved himself on that subject, in case it should be entered into by me.

Gentlemen, I desire it to be understood, that I enter upon it with no invidious object: I mean to make no complaint. My purposes are to set the defendant fairly before this tribunal without prejudice, and to show you how importantly the transactions in Ireland in respect to the place of trial, bear upon the fact.

In this part of the case it is material to attend to dates. At the sittings after Easter term, Mr. Cobbett was tried for this libel; and, about the same time, a bill depended in parliament, to secure the trial of persons, being in Ireland, who had committed offences here, and to bring them here for that purpose. That act received the royal assent on the 20th of July, 1804. In the month of November following, the bill of indictment was found against the present defendant, and his person was taken in Ireland, under a warrant to bring him here. When this arrest took place, nothing had been provided, but the power to bring the parties here; there was no power to accept bail, and he had no means of compelling the attendance of his witnesses. It was not till the 10th of July, 1805, twelve months after the passing of the former act, that this second statute, giving this most important power, received the royal assent. If the learned judge had submitted to the law, as it



then stood, defective in that most essential feature of justice, the means of obtaining testimony (and acknowledged to be so defective by the legislature itself, when it passed the amending act), he must have been tried without the power of securing to himself the presence of those, whose evidence must establish his innocence.

That he had good grounds for doubting that the statute applied to his case, is clear from this; that there were three judges of opinion, that his case was not within the law; three of the contrary opinion; of course, the execution of the warrant was suspended. Can it be inferred then, that the agitating such a question, under such circumstances, could imply any thing like a sense of guilt? or was it not a duty which the defendant owed to himself, to ensure a trial where he could have all the means and attributes likely to obtain justice?

I can assure you, gentlemen, it was not a wish to avoid, or a fear to encounter this tribunal, which directed his conduct:—he knows the sagacity, the intelligence, the lenity, the conscientious disposition of an English jury, superintended by an English Court. Could he have transferred this tribunal to Dublin, he would have been perfectly satisfied. It was not the aversion to convey an English Court to Ireland, but to have himself conveyed to England, that actuated him. It was most reasonable, under the defective powers of the law, as it stood antecedent to the 10th of July, 1805, that he should have been so actuated. Even now, how defective is that power! He is loaded with all the expense of bringing his witnesses here.

Gentlemen, the situation of a puisne judge, in the supreme courts of England or Ireland, is full of dignity, and of the first consideration; but unless there has been a previously successful practice at the bar, or the aid of private fortune, it is not above mediocrity in point of income: it is unable to accomplish more than the common expense of living in a manner suited to the dignity of the office. The defendant is not ashamed to have it said, that the expense of the trial is too much for him to bear; and that to have brought all the witnesses who would have been useful in his defence, to England, would have pressed him to the ground. But no expense, in bringing witnesses here, could have placed him in the situation he would have enjoyed by being tried there. He has lived long and respectably there; he is known to all the bench; he is looked up to by a numerous and independent bar; he is the friend and acquaintance of all public men: they all know his character; many know his hand-writing, on which this question singly turns, without one collateral fact to aid it, and with every presumption against the libel being his. No event could have occurred in the cause, but there would have been a witness of credit and reputation, known to the tribunal and knowing them,

ready to be produced. Here he is unknown; except my learned friends who are his counsel with me, and myself, there is not one who hears me, who ever saw his person, or knows his character.

The number of his witnesses can be but few: he could not afford to bring more. He must rest upon their testimony, without the power of adding to it. The witnesses are not known to you: they come from another country, and you have not the means of appreciating their testimony by a knowledge of their characters.

This is a hard state of things, where the whole depends upon a belief of hand-writing, positive and negative. But, gentlemen, I address a patient and most attentive tribunal, incapable of prejudice, and sure to administer justice in mercy.

That this gentleman belongs to another country, that he was born and has always lived in Ireland, will raise no prejudice in your minds, but will render you more scrupulously anxious to weigh the testimony by which the question is to be decided.

Gentlemen, here are two questions for you to try. The first is, the *publication*; the second, *whether the defendant wrote the libel in question?* They may be said both to turn ultimately upon the same proof—the belief of hand-writing.

The Court has not decided that there is proof of publication; it has only decided that there is evidence of publication *for you to consider*. It still remains, therefore, with you to say, whether the publication has been proved.

It is material to observe, that the counsel for the prosecution thought it necessary to try to mend their case in this respect, by calling Mr. Cobbett again; they endeavoured to get from him the loss of the first or introductory letter, so as to give proof of the hand-writing and contents of that letter. Now observe how this stands: Mr. Cobbett says he sent it to the printer, and that he never saw it more; but he does not otherwise prove it to be lost. To have proved it lost or destroyed, they should have called the printer, who would have had to prove what he did with it; and if he proved it lost or destroyed, the evidence of its contents might have been given. But at present there is no evidence that you can rest upon, connecting the first or introductory letter, with the letters set forth in the indictment. Even if there were an opening to such evidence, what does it amount to, but that it appears to Mr. Cobbett to have been the same hand-writing with the other papers? But this is no evidence for you to act upon in a criminal case, as a proof of publication. To resort to this evidence does not advance the case for the Crown, in point of proof; but shows, by bringing Mr. Cobbett forward again, that they did not think the case sufficient without it.

The question of publication is founded, as you have already heard, on the doctrine to be derived from the case of the Seven Bishops.



It is not enough to prove intention, or even solemn deliberate resolution to publish; it is necessary to prove an act of publication, otherwise it is to be supposed that the intention was not executed. In this case there is no proof of any step having been taken towards publication by the defendant. The Dublin post-mark proves nothing. The letter may have been put into the post by ten thousand people of that city, without the authority and privity of the defendant, and there is no proof of either. There is nothing to connect the defendant with the cover in which it was transmitted; they do not even attempt to make it out to be addressed by him. Supposing him, for argument's sake, to have written it, it is perfectly consistent with that fact that he should never have sent it; and it is essential, on every principle of justice, that it should not be presumed or inferred without proof.

A fact in the history of the literature of this country, affords the most convincing evidence of the danger of a contrary doctrine. If the doctrine contended for by the prosecutors were sound, lord Bolingbroke might have been convicted of a libel for publishing the Patriot King, though it is perfectly well known that lord Bolingbroke, the author of that work, did not publish it, but that Mr. Pope, secretly, and without lord Bolingbroke's knowledge, did publish it. The question then being, whether there is proof of Mr. Justice Johnson having published *Juvena* in Middlesex, by sending it from Ireland, he being resident there; I submit confidently, that there is no proof that he did any act to send it hither; and the presumption arising from what is contained in the letters themselves, cannot be resorted to; but if it were, it then brings the whole to the question of what credit is due to proof of hand-writing?

And this is chiefly to be considered in the second question which you have to try.

Gentlemen, there are many singular features in this sort of evidence, well worthy of consideration. You will remark, that the positive evidence of the witnesses, who say they believe this to be his hand-writing, cannot be encountered by any negative evidence, except that of belief that it is not his writing.

But before I enter upon the topics which this part of the case suggests, I wish to draw, from the purest source, a doctrine of the utmost importance in all criminal trials.

That revered and excellent judge, Mr. Justice John Powell, in the case of the Seven Bishops, so much referred to, says—"I think you have not sufficiently proved this paper to be subscribed by my lords the bishops."

The Solicitor General says—"What, not to read it?"

Mr. Justice Powell.—"No, not to read it: It is too slender a proof for such a case. I grant you, in civil actions, a slender proof is sufficient to make out a man's hand, by a letter to a tradesman, a correspondent, or the

like; but in criminal cases, such as this, if such a proof be allowed, where is the safety of your life, or any man's life here?"\*

Gentlemen, I do not contend for a different principle of evidence, but for a more strict attention to it; a more anxious leaning not to be satisfied with presumptive proof. In the ordinary transactions of civil life, in writing a note or bill, in sending a letter on business, in acknowledging a debt, there are concomitant acts which are easily traced, and afford the means of repelling the affirmative by negative proof of facts and circumstances; but in this case it is impossible. Here is no proof of a habit of public writing, no proof of particular time, or particular instruments of writing, no single fact on which negative proof can rest. To make out a negative, you must prove, in this case, every fact inconsistent with the affirmative proof of belief, or similitude of hand-writing. There are no means of establishing a negative in this case, but by proving all that he did, night and day, from the date of the first letter of *Juvena*, to the publication of the last. Can such an impossible proof be called for, to satisfy you of the innocence of the defendant? and will it not be sufficient to answer the evidence of the belief of the hand-writing by negative belief, by proof that it is not believed to be his writing?

Gentlemen, in this matter of hand-writing, and the credit due to the sort of testimony by which it is established, I shall be under the necessity of going somewhat more into general principles than is usual in this place.

Judicial tribunals instituted to judge of the acts of men, are not eye-witnesses to those acts: all justice is distributed through the medium of proof by witnesses; you, in that place, do not see the act which is to be the subject of your judgment: you have not the highest of all demonstration in matter of fact, your own ocular inspection, the evidence of your own eyes; but where the witnesses are competent in capacity, unbiassed by interest, and the truth is secured by the dread of the punishment of perjury, you have that upon which you can safely proceed; you have what may be termed *legal demonstration*, the highest testimony of which the subject is capable, founded on this clear intelligible principle, that *if the witness speak truth, the fact to which he speaks must be true*. But in speaking to hand-writing, where the witness has not seen the thing actually written, but speaks from his general knowledge of the hand, to his belief of a particular piece of writing which he has never seen before, he does not give that testimony which I have termed *legal demonstration*, for the witness may speak truth, he may be as pure and unsullied as an angel, and yet the fact to which he speaks may be utterly false; that is, the writing which he believes to be, from his idea of similitude, the

\* 12 Howell's State Trials, 304.



writing of a certain person, may not be the writing of that person.

In all such cases, of which there are many instances in the law, it is most important to have the fact supported by corroborating circumstances; it is testimony of so doubtful a nature, so liable to mistake, so marked with this most material and important distinction, namely, *that you cannot depend on the truth of the fact, though you may depend on the truth of the witness*, that it is always supported by concurring testimony, to render the proof complete. As I have already said, there are no means whatever of meeting it with negative testimony, to prove that the paper was not written by the person whose hand-writing is the subject of inquiry.

This negative testimony may be more easily obtained in ordinary transactions of life. A person may account for his time and his acts, to falsify testimony of hand-writing to a bond, or a bill, or a letter; but to such a charge as this no such testimony can be had; therefore, in the language of Mr. Justice Powell, if such proof is allowed to prevail, without any thing to support it, where is the safety of any man's life?

I am sure therefore, gentlemen, that you will not permit this evidence to make an impression on your minds, especially when you consider the case which I have to lay before you.

But first, let us examine the testimony of the witnesses for the crown. You must see from the way in which I consider this case, that I do not mean to impeach their credit as honest men. Mr. Attorney General is at liberty, with regard to their veracity as men, to consider them, in the language of the civilians, as *omni exceptione majores*; but the subject matter of their testimony is perfectly the reverse, it is the most uncertain, the most liable to mistake, that can be adduced in a court of justice.

Many persons write alike; having the same teacher, writing in the same office, being of the same family, all these produce similitude in hand-writing, which in common cases, and by common observers, is not liable to be distinguished. The hand-writing of the same person varies at different periods of life: it is affected by age, by infirmity, by habit. In this case you will observe, that all the witnesses say that the libel is more correctly written, the letters better cut, than the defendant's usual writing. Now, gentlemen, is this probable? these witnesses have not seen him write, nor been accustomed to see or examine his hand-writing for five years from this time; and the writing in question is written three years later than their habits of intercourse with his hand. Here are five years for loss of memory, and three years for the change of the character in writing, precisely at the time of life when the hand becomes less vigorous, the letter less clearly cut, and when, if there is any disease, or approaching disease, affecting the system of

the nerves, or any paralytic debility, all those defects increase.

In hand-writing, the evidence, by the law of England, is now fixed. It was fluctuating for a considerable time; and even after the act reversing Algernon Sydney's attainder, which declared that comparison of hands was not legal evidence of hand-writing, it was not quite settled; but it was often contended, that comparison of hands should be considered as good evidence. Now, and for a long time back, the great variety of transactions, from the extent of commerce and paper circulation, has rendered it perfectly fixed, and universally known; and there is not any person who has been twice in a court of justice, who does not know it as well as any of us, who pass our lives here.

The proof is now entirely confined to belief from recollection. The witness must have been accustomed to see the person write, or to have corresponded with him; by these means he must have attained a knowledge of his hand; writing by the same person being always performed in the same way, having a distinct character, different from the rest of the world, like the features of the face, so that you come to know the writing, as you know the countenance; but with this consideration, that recent acquaintance, frequent inspection, or want of opportunity to inspect, must make a great difference in the credit due to the witness; and the power of imitation, as well as accidental similarity, must have an influence in diminishing the credit due to the belief.

The person who deposes to writing, must first, from habit, have formed an abstract picture in his mind, of the writing; and he must, upon the moment, apply that to the particular instance. To render him a witness of credit, he must have the knowledge of writing generally, and be in habits of knowing the particular writing in question; and he must be left to the fair operation of his mind, without leading or prepossession. For the character of writing is much better known by its general aspect, than by minute examination; for example, when I look at the writing of my friend who sits by me, I say immediately on inspection, knowing his hand, 'that is Mr. Park's hand.' I do not find it necessary to look at the cut of particular letters, or the form of particular words. This last implies a want of acquaintance with, or correct memory of the general character of the hand; the mind has not obtained the abstract idea, and is therefore correcting it by particular features.

The witnesses for the prosecution stand in this predicament—they speak to the cut of particular letters, and not to the general hand merely—they have inspected this before—they come here not with correct original general knowledge of the hand from recent habit and inspection, but with a belief confirmed by recent and repeated inspection of the particular



*papers.* They were led to this belief by being brought to this country for the express purpose of inspecting Mr. Justice Johnson's writing. They were shown it in July 1804, soon after Mr. Cobbett had delivered up the manuscript; again before the grand jury; and again since they came here last: thus impressing on their minds what might first create, and afterwards confirm their belief: not brought to it by asking whose writing it was, but whether it was the defendant's.

They are none of them persons in habits of familiar intercourse or correspondence with him, but all clerks in office, or attorney's clerks, who knew his writing in his official or professional character five years ago.

It is a most singular feature in the proof to support this prosecution, that instead of bringing the companions and equals of Mr. Justice Johnson, those who live in his society, and discharge the same or similar duties with him, persons who know his writing up to this hour, the prosecutors should have sought such witnesses as those they have adduced. That instead of confirming the testimony of the witnesses who appeared before the grand jury, by persons of high respect and known character, equal to the defendant in rank, acquainted with him and his habits of writing, they should proceed in a sort of *anti-climax* in their evidence, beginning with Mr. Waller, a person who knew his writing officially, by being in the revenue department, to which the defendant was counsel, and ending with Mr. Edwards, not a witness on the bill of indictment, but brought now to help out the case—a young clerk, who had very little opportunity of seeing him write, who was only fourteen years of age when he became acquainted with the defendant, and not twenty-one when all intercourse ceased. This is strange corroborating testimony, when the whole bar and bench of Ireland was open to the subpoena of the crown.

But the terms in which the principal witness speaks, are extremely important, and deserve your most particular attention. Mr. Waller does not speak with certainty but with doubt. He is asked whether he believes it to be the hand-writing of the defendant, and afterwards whether he is certain of it. And he says, "I am as certain of it as it is possible for any man to be on such a subject." So that Mr. Waller admits uncertainty in the subject-matter, and his answer implies that he may be mistaken in the particular instance.

Gentlemen, this evidence, unsupported by any fact, contradicted by the rank, the situation, the habits (for where is the proof of his having dealt in such matters before?) of the defendant, ought not to influence you to believe that he is the writer of this libel.

But, gentlemen, you cannot hesitate to disbelieve that he is the author, when this testimony is encountered by negative proof, by witnesses who will prove that they do not be-

lieve it to be his hand-writing;—witnesses who live in habits of constant correspondence with him up to the present time; who cannot be mistaken as to their knowledge; who have the most perfect means of knowledge; who are not like the witnesses for the crown, proving a similitude of the particular writing, from an antiquated knowledge of the general hand, and who were confirming a belief which they had been guided to form by previous inspection, and a prepossession that they were to see the defendant's hand-writing. The witnesses whom I shall produce to you must speak without preparation or previous knowledge of the writing in question, which they have never seen, but which will be submitted to them now for the first time, and which they will speak to from a thorough knowledge of the writing of the defendant.

If this tribunal had sat in Dublin, instead of sitting here, I should have been able to have called a numerous audience to corroborate that testimony. The trial being, in what, to this gentleman, is a foreign country, deprives him of that advantage. I am farther instructed, that I shall prove to you that the habit of forging franks, frequent in this country, was still more frequent in Ireland; that he was from his professional situation, exposed to this more than any body; and it is less surprising, therefore, that something should have been produced resembling his hand-writing.

Gentlemen, under these circumstances, I am quite sure that you will see that I am venturing a proof which implies the most thorough consciousness of innocence on the part of the defendant. And you will not fail to recollect, that the higher the crime, the more strict ought to be the proof. The nature of the crime with which the learned judge is charged, may be deemed more weighty, and may be ranked in a higher class of offences than belongs to it in the scale of criminal actions, from the consideration of the character and station of the person who is charged with it. What would be a light offence in a person in the ordinary walks of life, becomes a high crime in a person whose time should be devoted to the distribution of justice, and whose pursuits and habits should be totally alien to publishing what may be thought a libel. You will not fail to bear this in your minds, and to require that the proof should be more clear and satisfactory in proportion.

Gentlemen, this is a charge of libel or defamation, unsupported by collateral proof, or by any corroborating fact. It rests on evidence liable to mistake—on evidence which may be all false, and yet the witnesses pure. It is reduced in short, as I said at the outset, to a question of *probability*.

Is it likely then that a person who held official situations of high consideration;—a person formerly a member of parliament;—a person always in the habit of supporting government; not in the practice of anonymous



publications;—the first person promoted to the bench on the completion of the Union, and that too by the very ministers who accomplished that work, and who now fill the councils of the king;—that such a person, now clothed with the revered and sacred character of a judge in the supreme tribunals of his country, should be guilty of composing and publishing such a libel, where there was no motive whatever to induce him to it, but every thing to produce a contrary impression? It is not credible.

Under these circumstances, you will consider whether it is possible for you to pronounce a verdict which shall sully the purity of the judicial character of your country.

Gentlemen, you will not fail to recollect, that the ermine of Ireland and of England is the same; that without offence to the respected and respectable tribunal which here presides, I might suppose the charge to be made against a judge of this country;—with what anxiety and hesitation would you weigh the testimony!—In your minds any distinction founded on national partiality cannot be supposed to exist. You will recollect that the judges of Ireland dispense the same law, live under the same political system, are educated in the same seminaries, guided by the same morality, practise, profess and believe in the same religion with the judges here. When you contemplate such a character, accused of such a crime, resting on such proof, to be met by contrary testimony, I am confident that you will find this venerable judge, highly respectable for his learning and his talents, to be—Not Guilty.

#### EVIDENCE FOR THE DEFENDANT.

Sir Henry Jebb sworn.—Examined by Mr. Park.

What are you by profession?—A surgeon, but I practise physic also. I hold a rank in the college of physicians, which obliges me.

Have you been long acquainted with Mr. Justice Johnson?—A very long time.

How many years?—About thirty years; considerably more than twenty.

Has your acquaintance with him been intimate?—Extremely so.

What aged man is Mr. Justice Johnson?—I should suppose somewhere near 60.

Have you attended him in your medical capacity?—Yes.

Is he, or has he been, in an infirm state of health?—He is at present considerably amended, but for some years back he has been extremely ill.

Has his illness affected his nerves?—Materially: he had a paralytic stroke, and lost the use of one side.

How long ago is it since he was so afflicted?—Perhaps a year and a half. He has been complaining for two or three years; he was apprehensive there was something on the brain, from the symptoms that appeared; but his disorder was paralytic.

Have you, in the course of this your intimate acquaintance with him, been in the habit of corresponding with him by letters?—Constantly, every week; it depended on the state of his health. I have been intimately acquainted with his hand-writing for twenty years.

Has your acquaintance with his hand-writing continued down to the present time?—Constantly.

Look very carefully at these papers, because you cannot have seen them before.

From your knowledge of his hand-writing, do you believe this is the hand-writing of judge Johnson?—I do believe this is not the hand-writing of judge Johnson. [The witness in this answer referred to the first libel, dated 29th October.]

Look at this (the libel of the 28th November)?—This strikes me to have less similitude than the other.

Your opinion is, that it has less similitude to his hand-writing than the other?—So it appears to me.

Is that hand-writing a lesser or fairer hand than judge Johnson writes?—It is not easy to describe what in hand-writing is similitude. His hand in general was larger and freer, and the turns of the long-tailed letters are different from his.

From your idea of his hand writing, by seeing it for so long a period, do you think this is his hand-writing?—My belief is, that it is not.

Your belief is not founded on comparison?—No; from my long knowledge of his habit of writing.

I think I understand you to have said that your acquaintance with his hand-writing has gone on without interruption?—There never has been an hour's interruption.

Sir Henry Jebb cross-examined by Mr. Attorney General.

Am I to understand you, that you think there is no resemblance between this and the defendant's general mode of writing?—No; there is a general resemblance between all hand-writings, or they could not be read; but this is very dissimilar to judge Johnson's.

Do you mean then that there is no other resemblance except that general resemblance which exists in all hand-writings?—It is not easy to draw this distinction: I think a person who was not acquainted with his manner of writing, might be led to say there was; a person not so intimately acquainted with his writing as I am, might think so.

Then you think it has some resemblance to the hand-writing of Mr. Justice Johnson?—Yes.

Is it more like what he wrote three or four years ago?—I do not think there is any difference in that respect, the paralytic disorder has not affected his hand-writing; it was his side that was affected.



The right side, I believe?—Yes.

Do you recollect the period?—Yes, he was just recovering from it at the time of his arrest. I happened to be visiting him at the time he was arrested.

In the beginning of 1805?—Yes, in January.

But I think you say there is not now any material alteration in his hand-writing from what it was formerly?—I think not.

Then you think that those who were acquainted with it three or four years ago, may be equally well acquainted with it now as you are?—Certainly.

I think you make a distinction between the second libel and the first, and that there is less similitude between that than the other; from which I conclude, that you think one has more similitude than the other?—One appeared to me to be more cramped than the other.

You mean not so fair?—Yes.

Not so loose a hand?—I am at a loss to describe the difference in hand-writing: it is like the difference in the features of a man's face.

The difference, however, you think would strike any one?—I think it would.

You have had frequent opportunities of seeing Mr. Justice Johnson's hand-writing?—Yes.

Have you ever seen any writing of his that was prepared for the press?—I believe I may.

Do you recollect whether you have or not?—I do.

Written with more care?—I do not know I ever saw any that was prepared to go to the press.

Perhaps you never saw any of his writing, in which it was his object to crowd a great deal into a little space?—I have seen him writing, to crowd as much in as he could.

Was his hand then so cramped?—On all occasions I have seen him write a larger, freer hand.

What, when crowding any thing on a brief?—Indeed I have.

Have you had any opportunity of seeing writing, so resembling judge Johnson's writing, as to impose upon you?—I have seen hand-writings I could not distinguish from his.

You have seen some you could not distinguish from his?—Yes.

Have you had any occasion to know, that in these instances the hand-writing you saw was not his?—I certainly had.

How long ago may that be?—Some very short time; about a week before I left Dublin.

About a week before you left Dublin, you had an opportunity of seeing hand-writing that you could not distinguish from his?—I had.

Had you an opportunity of knowing whose hand-writing that was?—I had not.

Where was it the defendant produced it?—At my house in Stephen's-green.

Upon what occasion, and for what purpose

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was it shown to you?—The occasion was this: I was told that there was a person in Dublin who wrote so like judge Johnson, that it could not be distinguished; that he had written these letters; and that he would come forward and avow himself; but that his father held a place under government, and he was afraid he would be turned out if it was known; that he would write over these papers on blank sheets, to be previously marked by the company, in order that it might be ascertained that judge Johnson never wrote them. I marked the papers, and went into another room. I waited two or three hours till they were brought from another house.

And judge Johnson told you they were written by that person?—He did.

Is that like judge Johnson's hand-writing?—I do not think the copies I marked were like that hand-writing.

This was about a week before you came from Ireland?—A short time.

It took place with a view to your giving evidence?—Yes, for they made me put the initials of my name.

Did you ever see such imitation of judge Johnson's hand-writing, before he was charged with being the author of this libel?—Yes, imitation of franks, and such as that.

You understand that judge Johnson understands who the author is?—I do not know.

Then how could he communicate it to you?—It was not he, but another gentleman, who came and said he would produce the man.

It was not an accidental meeting?—No, not accidental.

Mr. Justice Johnson was present?—Yes.

Did he bring forward this gentleman, or did he come in?—He came in.

Did he come by appointment?—I do not know.

Did he say he expected him to come?—I cannot say he did, but I apprehend so.

It was the letters of *Juvena* that were copied?—They were letters as if sent from Dublin.

Who was present besides himself?—A Mr. Tom Johnson.

Is he here?—Yes, he is opposite [The witness pointed to a gentleman under the jury-box].

Who else?—A Mr. Irvine.

Who else?—I do not recollect.

Give me leave to ask you who this gentleman was who came in?—He is a gentleman who lives in Chatham-street; I do not recollect his name. He is an intimate friend of Mr. Johnson: I think his name is Card, but I am not sure.

Sir Henry Jebb re-examined by Mr. Park.

I do not understand you, as saying that there is no similarity between this hand-writing and judge Johnson's?—No.

But a great diversity?—Yes, a diversity that makes my belief that it is not his.



This business of the meeting (which is new to me) I understand you, happened a week before you came from Dublin?—Yes, before I left Ireland.

At your house?—Yes.

Judge Johnson came to your house?—Yes.

And some gentleman said he would come forward, if he could screen his family?—Yes.

Do you believe it was any of Mr. Johnson's family?—I do not.

But you did not understand that this bringing him forward was under judge Johnson's control?—Certainly not; the meeting was to copy the papers, so as to enable us to prove the negative.

Mr. *Attorney General*.—Do I understand you, that this is remarkably dissimilar?—It struck me more so on a superficial view, than on an accurate examination.

Dr. *Hodgkinson* sworn.—Examined by Mr. *Lockhart*.

Are you a fellow of the university of Dublin?—I am a senior fellow of the university of Dublin.

Are you related to Mr. Johnson?—Nearly related.

Have you been long acquainted with him?—Yes.

How long?—Upwards of twenty years.

Have you corresponded with him?—Frequently, almost constantly, I may say, without interruption.

Without interruption?—Yes.

Have you ever seen him write?—Frequently.

Look at this.—I have looked over the greater part, I have not looked over the whole.

From your general knowledge of his character of writing, do you believe that to be his hand-writing?—I do not believe it to be his hand-writing.

Look at the other.—This is so totally different a hand, particularly in the beginning of it, from what judge Johnson writes, that I have no hesitation in saying it is not his hand-writing, as I believe.

Dr. *Hodgkinson* cross-examined by Mr. *Solicitor General*.

I understand you to say, that it is so totally unlike, that you have no hesitation in saying it is not his?—This latter paper is (particularly in the beginning of it) very unlike.

With respect to the first, you seemed to take pains to look over it?—I did so, because an abstract piece of writing of this kind having been produced to me now for the first time, at a distance from my own country, it is necessary I should carefully examine it, and especially as at first view it has some general appearance of the character of Mr. Justice Johnson's hand-writing; but on narrowly and carefully examining it, it is materially different: I find it much smaller writing, a more confined hand, and many of the letters

differently cut from judge Johnson's mode of writing, particularly some years past his hand-writing has been larger even than formerly, so that I have no hesitation in saying it is not his hand-writing, as I believe.

You were at the same distance from your native country when you looked at the second paper, and therefore why did you take less time in looking at it than at the first?—This latter is so very unlike judge Johnson's writing, particularly in the beginning of it, that it took me less time to form an opinion of it than of the first paper writing.

Then you have no doubt as to this not being his hand-writing?—It is not, particularly in the beginning, at all like it. I will not say there are not some words like, but the general appearance of it is very unlike.

Did you look at the word "could"?—I did not particularly observe that word in these papers.

How do you spell it?—C-o-u-l-d; I believe it is usually so spelt.

How does judge Johnson spell it? does he spell it with the "l," or without it?—I have found that he has spelt it both ways.

Can you take upon yourself to say, that you took particular notice of the words *should* and *could*, to see how he spelt them in the papers now shown to you?—Certainly *not particularly*; it was hardly possible to do so under the circumstances, and in the manner in which they have now been produced to me; nor do I believe that he has spelt them in the papers now shown to me.

It was the general character then of his hand-writing that you looked at?—Yes.

You said that you had seen his writing frequently; what was the nature of that writing?—Letters and notes.

When written?—Some a long while ago; some within these few months.

I believe you have paid particular attention to the words *could* and *would* in judge Johnson's writing?—In the papers now shown to me I did not, it was scarcely possible for me to do so under the circumstances in which I have now first seen them; in other writings of his I have certainly done so, and have seen him several times and on different occasions spell these words in both ways.

I take it you observed that circumstance before this prosecution?—Certainly long before.

Who was it that pointed it to you that the words *could* and *would* were spelt that way?—Without an "l." I had heard it, I believe, rumoured through the four courts in Dublin, that that circumstance had been fastened upon by the prosecutors, and that it had left no doubt of his being the author of these papers.

You heard it by common rumour?—Yes.

Then as you have heard there was that distinguishing feature, I should think that on referring to these letters you would take particular notice of it?—Having heard the obser-



vation, I in consequence of it have looked over, and examined many writings of judge Johnson's, some written many years ago; and I have found that he spelt these words both ways, therefore, even if it had been practicable, I should not probably have directed my attention to this circumstance upon the present occasion.

I am sure you must have shrewdness enough to see that it would be very material to observe whether *could* and *should* were wrote in the usual way that they are written or not?—I think I have already explained why, even if practicable, it is not probable that I should now direct my attention to that circumstance; judge Johnson, like most other persons, writes them in both ways.

What would you say to his writing them differently since the prosecution?—Of that I know nothing, not having observed it.

Have you ever seen any writing so like judge Johnson's, that you could not distinguish it from his?—I have seen writing that I have been informed was not his hand-writing, but so like, that at the first view I should have thought it was his.

How often have you seen hand-writing of that description?—On three or four different occasions.

In what country did you see the hand-writing first?—In Ireland.

At whose house did you see the hand-writing?—The first time I ever saw it, was in the house of his brother, Mr. Thomas Johnson.

At what time first?—About a year ago.

About 1804?—Yes.

Some time about the latter end of 1804 you saw that piece of writing in his house?—I did.

You have seen more writing that was like his, perhaps?—Yes, some others so like to his, that at the first blush I should have thought it his writing.

You never heard of the son of a gentleman in office having written these papers?—Never, certainly never.

What was the nature of this writing?—It was produced to me by his brother, to show how easy it was to counterfeit the judge's hand-writing.

You agreed it was so like his, that nobody could distinguish it?—That I could not distinguish it.

This was the latter end of 1804?—It was, as near as I can recollect.

By whom was this written?—I do not know.

I am not asking you what he told you when by yourself, but in the judge's presence?—He never told me in his presence.

What was the nature of the paper?—It appeared to be a note addressed to some person.

What was the second paper?—A brief with marginal annotations.

Who produced that?—Sir Henry Jebb, if I

recollect right. They were so like the judge's hand-writing, that I could not distinguish them from it in the view I had.

Where was this?—In Ireland.

Where?—In sir Henry Jebb's house.

Then you have seen these papers twice only?—Yes, I have seen some of them since that.

Who showed them to you?—I have seen some of them since I came to town, in judge Johnson's lodging, and shown to me by him.

Then these papers, one of which Mr. Johnson showed you, and the second of which sir Henry Jebb showed you, you afterwards saw at judge Johnson's in London?—That which Mr. Johnson showed me I never saw afterwards, that which sir Henry Jebb showed me, I did.

What did judge Johnson say to you?—He showed them as writing so like his, that any person might mistake them.

Then judge Johnson was present at this latter time, and produced to you this writing as a proof how like any man could write to him?—Not how like any man could write to him, but how like some could.

These were briefs?—Yes; briefs addressed to him on the cover.

Marked with his name as mine is? that I hold in my hand is marked "Mr. Erskine;" delivered to him as counsel?—They were briefs delivered to him as counsel, I believe, when he was such.

And he showed them to you, to show you that there were annotations on them so like his writing, that the difference could not be known?—Yes, could not be known at least by me. I speak only of myself.

Did he communicate to you who the gentleman was who had favoured him with these annotations?—No, never.

But you are sure they were on his briefs?—Yes, on briefs addressed to him.

You say this has no resemblance to his hand-writing?—No, I do not say that; I only say I do not believe it is his hand-writing.

When were you first served with a subpoena?—On Monday last.

And had you no previous notice that you would be examined as a witness in this cause?—No, I came to this country principally on my own business; but I never conceived I was to be examined as a witness until Monday last, though judge Johnson had repeatedly expressed a wish to have me and others of his intimate friends with him on this awful occasion.

*Dr. Hodgkinson re-examined by Mr. Lockhart.*

Though there is some of the writing which you say it is difficult at first view to distinguish, on account of a similarity to the general manner of judge Johnson's writing, can you take upon you to say, whether you believe it to be his or not?—I think I have answered that question already; but I say again, I do not believe it to be his hand-writing.



Lord *Ellenborough*.—How do you know these annotations on the brief were not his hand-writing?—I take it only from what he told me; he said so.

As I understand from you, the judge showed them to you?—Yes.

[The jury desired to see the papers.]

Sir *Henry Jebb* re-examined.

Did you ever show Dr. Hodgkinson any briefs, with minutes of Judge Johnson on them, which he never wrote?—I showed him copies of letters: there are also briefs written in the same way.

How did you know these not to be the actual hand-writing of judge Johnson?—The brief was drawn out as a lawyer's brief, without annotations. Mr. Irvine and myself put our initials on it; it was taken away, and in three or four hours afterwards the brief was brought back, with annotations so like judge Johnson's, that we could not distinguish them. Judge Johnson had never been out of the room.

Lord *Ellenborough*.—Could not this have been done by two briefs, one with annotations, and the other not?—It is impossible not to be deceived.

Is the gentleman who carried the briefs out and into the room here?—No, he is not here.

[Mr. Adam produced the brief.]

You know who wrote it?—Mr. Card, I believe.

Mr. *Archdale* sworn.—Examined by Mr. *Richardson*.

How long have you been acquainted with Mr. Johnson?—Fourteen or fifteen years.

Have you been intimate with him?—Very much so.

Have you had opportunities of being in correspondence with him?—Yes.

Have you had opportunities of knowing his hand-writing?—I have seen him write lately, and for the course of ten years have seen him write.

I believe you are assistant to Mr. Waller?—I was.

Had you repeated opportunities of seeing judge Johnson in business?—Yes.

Were they as frequent as Mr. Waller's?—More so.

Are you from that well acquainted with his hand-writing?—I am.

Is he an intimate acquaintance of yours?—Indeed, sir, he is.

Is he any relation of your's?—No.

Have you examined the manuscript sufficiently to form a judgment?—I have.

In your judgment, is that the hand-writing of judge Johnson?—In my judgment of judge Johnson's writing, it is not.

Have you any doubt?—Upon my word I have no doubt in the world.

Have you examined that?—I have.

What is your opinion?—My opinion is, that it is not judge Johnson's hand-writing, nor do I think it any way like it; no similitude at all to it.

Mr. *Archdale* cross-examined by Mr. *Erskine*.

How many years were you in this office, that gave you so familiar an acquaintance with judge Johnson's hand-writing?—Ten years.

Likeness of hand-writing has been compared with the features of the face: I should suppose judge Johnson's face is familiar to you: should you be as long looking at his features to see if you knew him?—I have not a sharp eye, and I would not be staring in any man's face. You should give one time to look over it. I could have said it at the first blush; but I did not wish to give an answer, as if I had come prepared.

Then you think they were written by different people?—I should think they were.

You are so clear that the two papers are written by different people, as that neither was written by judge Johnson?—I am.

Did Mr. Waller or yourself come first into the office?—Mr. Waller, several years.

Was Mr. Johnson counsel to the board when you came in first?—I don't believe he was.

Have you any doubt?—I think he was not; for counsellor Beresford was then counsel to the board.

Are you in office now?—I have not been in office some years.

Did you resign?—I did.

Voluntarily resign?—Yes.

When?—In 1789.

Did not judge Johnson continue to be counsel to the board?—I believe he did.

Then Mr. Waller was longer at the office, while judge Johnson continued counsel to the board, than you were?—Yes, but he had not the opportunity of being with him I had, for I used to go and correct the acts of parliament with him.

You do not think Mr. Waller was so well acquainted with his hand-writing as you were?—Not so well as I.

Have you been at any of these meetings which we have heard of?—No, but I have seen some notes.

Where?—At Dublin.

At whose house?—At Mr. Fleming's, in Smock-alley.

How long ago?—About three weeks ago.

Was Mr. Johnson there?—No.

What notes were they?—Two covers of Robert Johnson's name: attempting to imitate his name, probably.

And who was it wrote them?—It was a Mr. Fleming, I believe.

Is Mr. Fleming here?—I do not know.

What is he?—I do not know any thing of him, good, bad, or indifferent: I heard him called Fleming.

How came you to be there?—They brought me.



Who?—A Mr. Giffard.

Who is Mr. Giffard?—I believe he is a barrister.

How came you to go with him?—Because he asked me, and I am not afraid to go any where.

What, do you go any where you are asked? Suppose any man you do not know, was to meet you this charming foggy evening, after you leave the court, and should ask you to take a walk with him to White-chapel, would you go?—I would.

Mr. *Erskine*.—You would. Well, I know I would not; and all I have to say farther is, that I wish you a pleasant walk.

Mr. *Archdale* re-examined by Mr. *Richardson*.

Though you are no longer in the office of solicitor to the revenue, do you hold any other public office?—No.

What are you doing now?—I am doing business for a Mr. Barlow.

Have you been acquainted with judge Johnson up to the present time?—Yes.

And his hand-writing, the same as you formerly were?—Yes.

Was his hand a freer hand?—A freer and larger hand.

Mr. *John Giffard* sworn.—Examined by Mr. *Adam*.

Is your residence in Dublin?—Generally.

Are you acquainted with judge Johnson?—I am.

How long have you known him?—A great many years; more than thirty years: within these fifteen or sixteen years more intimately than before.

Have you been in the habit of corresponding with him?—But little in the habit of seeing him write.

How late have you seen him write?—Within this week.

Are you capable of forming a competent judgment of his hand-writing?—I can form a judgment; it will be for you to say whether it is competent.

Can you form a belief?—I can.

Now you have looked at that paper, do you believe it to be judge Johnson's hand-writing?—I believe it is not.

Look at the other. Do you believe that to be his hand-writing?—I believe it is not.

Mr. *John Giffard* cross-examined by Mr. *Garrow*.

Is your opinion of both the papers similar?—One is more like the judge's than the other.

That is, his is more like the first?—The one is a cramped hand; the judge's is a loose dashing hand, like a clerk.

Then there is some resemblance of the cut of the letters; but it is like the hand of some one not waiting to take pains?—No, not taking pains.

Where is it like, and where unlike?—It is

not such a hand as a man writes with very great freedom.

That is, not such a one as the judge writes?—No, it is not.

Now as to the second?—There is some similarity in all hand-writing.

What do you mean? Do you mean to say all O's are round?—No, sir; all O's are not round; but I say all English writings have a likeness to one another, otherwise they could not be read by Englishmen.

Then all Irish writing is alike too, I suppose?—English and Irish writing is the same. I thought we were all one kingdom. Is there any difference?

In what does it resemble judge Johnson's writing?—The letters have something, at the first look of them, of his manner, till you come to look into them.

What, just as your face and mine are alike, till you come to look into them?—Oh, sir, you do me honour.

Am I to understand then, that there is no more resemblance between this writing, than there is between two faces which happen to have a nose and a pair of ears? In what respect is it more like judge Johnson's than yours?—It is larger than mine, though not so large as judge Johnson's.

Does the cut of these letters resemble judge Johnson's letters?—If you suppose the transverse lines to be parallel to the plane of the horizon, then the writing shown me is more perpendicular to that plane than judge Johnson's.

You could not then be imposed on so much as to believe it his?—No.

Then if I wrote in a similar hand to that, an invitation to you to dinner with judge Johnson, should you think it came from him, and attend accordingly?—As for that, in an invitation to dinner, a man seldom considers the writing.

Suppose that had imported to be an invitation to visit your friend, should you have thought it came from him?—If it had come to me as a card, I should have put it in my rack; and when the day came, I should have gone to dinner.

Should you have acted upon it?—I certainly should.

Then it would have presented itself to you as the letter of your friend?—It would; but if any man had called upon me, and asked me whether I thought it his, I should have hesitated, and examined it more carefully.

Are you acquainted with Mr. Archdale?—I have seen him here and in Dublin.

Of what profession are you?—At present I am of none. I held an office in the revenue, but was turned out by lord Hardwicke.

Why?—For that being a Protestant, I moved a petition which was presented to the imperial parliament, praying them to sustain the king and constitution.\*

\* As to this, see 2 *Plowden's Hist. Ireland from the Union to 1810*, p. 40.



How do you know this was the cause of your dismissal?—Lord Hardwicke told me so.

Have you a son?—I have that honour.

Is he of any profession?—He is a barrister.

Do you know a person of the name of Fleming?—Yes. He is an alderman in Mer-rion-row. He did live in Smock-alley, but he has retired to the polite end of the town. He was lord mayor in the year of the rebellion.

Has he a house in Smock-alley?—He has not lived there for three years. He has an interest in the house; his name is over the door. I believe his relation who lives there has assumed his name.

What business does that person carry on?—A card-maker: such cards as ye play with.

Are you acquainted with him?—Not so intimately as with the alderman.

Nor your son?—I cannot tell.

Did you ever see Mr. Fleming write?—I have seen the alderman write, and the other person is clerk to the commissioners of array, or as they are called with us, deputy governors of militia. I am one of those commissioners.

You have seen him write?—Yes.

As you think this is not judge Johnson's hand-writing, do you know whose you think it is?—No.

Do you think that Mr. Fleming did not write it?—The alderman did not: he is decrepid with the gout.

Do you think it is like his nephew's?—Now I call it to mind, the nephew writes a dashing hand, something like judge Johnson.

You say, sir, that this writing is larger than yours, and that judge Johnson's is larger than yours; this writing, then, may be judge Johnson's?—O, sir, that is a gross *non sequitur*.

Mr. John Giffard re-examined by  
Mr. Adam.

Did you know alderman Fleming when you were sheriff of Dublin?—I did.

Was it only in that way you knew him?—I knew him long before I was sheriff.

How often did you discharge the duty of sheriff?—Never but once, and in a time of great turbulence.

You know the other Mr. Fleming well?—I have dined with him, and sat at the board with him, where I am deputy-governor, &c.

Now after all the questions that have been asked of you, considering these papers again, do you believe them to be judge Johnson's hand-writing?—I do not.

Mr. Cassedy sworn.---Examined by  
Mr. Park.

What is your christian name?—David.

You reside in England?—Yes.

You are an apothecary?—I have been.

Are you an Irishman by birth?—I am.

Have you known judge Johnson for any time?—From my earliest youth, for twenty-five years.

Were you educated with him?—In the same city,

Has your intimacy with him continued?—Always.

Have you ever seen him write?—I have.

Have you been in the habit of corresponding with him?—Generally to this day.

Have you seen him when in England studying the law?—Always.

Are you able to form a belief as to his hand-writing?—I should think so.

Look at that paper?—There is some resemblance.

From your knowledge of the character of his writing, do you believe it to be his?—I rather think it is not, for his is a more diffuse and larger hand.

Is the character of that hand-writing more stiff than you think the judge would write?—I think it is.

Look at the other paper?—I do not think the second is so like as the first.

Putting the same question again to you, do you think either of these his hand-writing?—I think neither.

#### REPLY.

Mr. Attorney General.—Gentlemen of the Jury; When I had occasion before to address you, I certainly was very strongly impressed with an idea, that Mr. Justice Johnson had strangely misconducted himself, in not taking the earliest opportunity of endeavouring, upon the merits and the facts, to have disproved the only sources from which the facts were to be brought home to him. I had thought that, under the circumstances of so disgraceful a charge, no opportunity would have been lost to have cleared him from the foul stigma it attached to his character; but if Mr. Justice Johnson could not have been defended from this charge, by other testimony than that which he has produced, I do not wonder that he shrunk back from that hour in which he was to be called upon to enter upon his defence to the accusations against him; for I have no hesitation in saying, that much as I thought the charge itself disgraceful, yet it is nothing compared with the manner in which he has been defended. I have no doubt that there is not a man in the box, among the respectable jury I have the honour to address, nay, not an infant of fifteen years of age, who could be imposed upon by a story such as that you have heard from the defendant's witnesses.

My learned friend has told you, that he hopes there will be no prejudice excited in your minds, by the difference of the defendant being an Irish, and not an English judge. I am sure there will be no prejudice on that account. He hopes you will deal out the same measure of justice, as if the defendant were one of the judges of this part of the United Kingdom, and that you will administer the law the same way, as if it were one of the twelve judges of England who was before you.

I hope that, in your consideration of this



case of the judge, who is the defendant, you will have in your minds all that association of ideas which men usually have, when they refer to the character of a judge. We who sit here know, from the observations we are daily in the habit of making, that in the character of a judge is included every thing honourable and virtuous; every thing one would wish to embody of excellence and perfection, is so associated with the character of a judge, that those virtues cannot fail to present themselves to the mind of every one who contemplates it. I wish, I repeat, that the same ideas of veneration and respect may be associated in your minds, when you are forming your judgment on the case of Mr. Justice Johnson; but I wish you also to consider, whether, if he had been innocent, he would have been playing off those tricks in Ireland, bringing forward these witnesses, not to prove that there is no resemblance in these libels to judge Johnson's writing, but that the person who is the real author would be ready to deliver himself up, but for circumstances connected with his family; that this person, who writes so like him now, has before written so unlike him, that there is not the least resemblance. It is clear they would impose this proposition on your understanding, that the man who wrote these papers so like judge Johnson, that the witnesses believe they are his, yet has written that which is so unlike, that no one can believe it could have been written by him; and it is such witnesses as these who are called to answer the four witnesses I have produced, and to prove that they are perjured! It seems to me that you must be completely satisfied, and that I need hardly make any more observations; but let us look a little into the probability of the testimony on the part of the defendant, for this is the point of the case. Let us look to the nature of the story they have told you.

You find that judge Johnson was, at the latter end of last year, charged with being the author of this libel. One of the witnesses, Dr. Hodgkinson, speaks to his seeing some of the hand-writing in imitation of his, so early as last year. The idea you find was entertained, that it might be useful to have some person to bring forward, whose writing was like judge Johnson's. It seems that at some house where Mr. Johnson was, a Mr. Card came in, and represented that he was ready to carry a blank paper with the initials of the company marked on it, out of the house for two or three hours, and that it should be brought back filled up with writing exactly like that of judge Johnson, and then they would be sure that he had not written it. Well, the first observation I make is, that which suggested itself to the Bench, whether this could not be done by two briefs previously prepared, one with annotations, and the other without them. What is this case? Here is a paper identified by the gentlemen present: it is taken away, and afterwards produced by

Mr. Card, and it is said that the writing was so like the judge's, it could not be distinguished. Then all you have to consider is this: either the writing has been forged and copied, or the initials have been forged and copied. If the writing had been previously copied by judge Johnson himself, he might have desired the gentlemen to put their initials to a blank paper; then all that would be required would be to copy the initials, or if that was not the case, the whole would be to be re-copied in imitation of the original. Which do you think is the more probable, that a person should be able to copy the writing over a long paper, or the initials only? Certainly it would be much easier to do the one than the other, so that you see it is perfectly reconcileable, that the whole of the writing that was brought there, might be the hand-writing of judge Johnson.

There is another observation to be made on this part of the case. What is it the witnesses prove? they prove what was the feeling of judge Johnson on the subject. His feeling was, that it was necessary the witnesses before they came into court, should see some hand-writing like his. They all come here and state that they have seen a brief with marginal notes resembling the writing of the judge. At Mr. Johnson's lodgings this brief is shown to some of them who had not seen it before, and it is supposed to be the writing of the same person who wrote the two letters; and when this is done, they come here and all swear positively that although the first has some resemblance to the defendant's hand-writing, yet the second has none at all. Now if they say there is no resemblance at all, it is impossible that these gentlemen can be otherwise than perjured; because the opportunity Mr. Waller had of knowing the judge's hand-writing is equal to theirs, and they tell you, as my learned friend was instructed to tell you, that the disorder with which Mr. Johnson had been afflicted was a palsy, but that his hand-writing was not altered or affected by it. How then can our witnesses be said to have no knowledge of his hand-writing, when it is exactly like what it was when they had such opportunities of being acquainted with it? They say there is no alteration in his hand-writing; if there is not, then Mr. Waller and the other witnesses for the prosecution, are every way competent to give evidence of it. It is not only Dr. Jebb and Dr. Hodgkinson, but the other witnesses for the defendant, who tell you they have seen writing so perfectly resembling Mr. Johnson's, that they could not distinguish it. There is Mr. Archdale too, whose evidence is very extraordinary. He tells you how he saw the writing: that he went to the house of Mr. Fleming; that he was led there by a Mr. Giffard, though he hardly knew any thing of him; that he went with him to Mr. Fleming's, for no other reason, as he told you, than because he was not afraid to go any where. He is called upon



by Mr. Giffard, and is brought to Mr. Fleming's house, and there he sees him write franks, and imitate judge Johnson's name; then how does this bear on the case? I revert to what I have already said, that if this evidence is believed, it amounts to this: that the hand-writing which we charge to be judge Johnson's, if it is not his, is the hand-writing of some one who writes so like him that the witnesses cannot tell the one from the other.

In this state of the case on the part of the defendant, and considering the evidence you have heard in support of it, it seems to me that all the testimony we have produced is confirmed and strengthened, and that the case on the part of the prosecution is so established, as to render it almost unnecessary for me to trouble you with any farther observations.

But I have been told that the learned judge considers he has been unnecessarily pressed with the expenses of this prosecution, and states his inability on that account to bring forward all the witnesses that were necessary to his defence. I confess I do not see what he has to complain of in this respect. Mr. Justice Johnson has a brother in this country, who must of course be well acquainted with his hand-writing, and yet, notwithstanding this paucity of witnesses in support of the defence, he is not called upon. This is a material circumstance for your consideration; but what are the difficulties of which he complains? It has been stated to you, that by the operation of a late act of parliament under which he is tried, he could not have had process to compel the attendance of his witnesses without the other act of parliament which has been mentioned to you; but when my learned friend says that all the opposition and delay to prevent the trial being brought forward, arose merely from the difficulty the defendant had in obtaining the testimony of his witnesses, he tells you that which is not correct. I have a right to say in answer to his assertion, that the delay has not originated in any fault of those who have had the conduct of the prosecution. I have also a right to say, that the prosecution could not be supported by any other evidence than what was to be found in England, and consequently it could not be tried any where but in England; all we knew was of the publication in this country. The trial must of necessity have been where the offence was committed, and for that reason it has taken place here. But I have it in my power to say, that a Dublin jury might have been had, if the defendant would have consented that no difficulty should have been thrown in the way as to the proof of publication.

It is in answer only to this topic, urged by the defendant's counsel, that I trouble you with the mention of these facts. If the defendant assumes the right of stating a number of circumstances which can only be answered by assertions, he has no reason to complain if I make them also. I have an equal right to

complain of his assertions, and to meet them by counter-assertions. You may put both out of your consideration if you please; but if the one is to be attacked, the other is open to be attacked too.

With respect to the other, and principal point, namely, the hand-writing, there are two questions turning upon it, namely, first the identity of the hand-writing; and secondly, how far the evidence fixes the fact of publication. One question is, whether the hand-writing is judge Johnson's? which is quite a distinct consideration; the other is, whether, supposing that to be proved, it proves the second link in the case, that is to say, the publication in England? Now I apprehend, that if the hand-writing is proved, I may prove out of the publication itself, that this was a writing procured by the defendant to be published in this country.

What my learned friend has supposed with regard to a desk being broken open, and the manuscript stolen out, goes for nothing; for I have shown you that in some of the letters, the defendant notices a former one, and laments and expresses his regret at its having been published, if it could have had the effect of injuring the feelings of Cambricus. Out of that very text I maintain that I prove it to be the publication of the defendant. My learned friend has stated to you the case of the publication of the "Patriot King," by Mr. Pope. It may be true that lord Bolingbroke wrote it, and that Mr. Pope obtained the manuscript without his knowledge, but this is quite a different case. If the defendant wishes you to believe the manuscript was stolen from him and published without his knowledge, let him show that his desk was broken open; that after he had written this scandalous libel, he reflected and thought better of it; that he locked it up, intending to keep it from the public eye; and that some person afterwards surreptitiously obtained it, and sent it to the press.

The question here is, whether you have not evidence from which you must conclude that the person who wrote the libel, wrote it in order that it might be published in England? You have the same evidence of the publication as you usually have of the publication of a bill of exchange, by the person signing it. If you prove his hand-writing you need not show that it was not stolen from him afterwards by somebody else. The mere circumstance of its being found in a course of circulation, is sufficient to establish the whole of the case. So here, when you find that the whole of the libel is in the hand-writing of the defendant, you must infer that he wrote it for the express purpose of giving it to the public. He introduces it to the publisher here by a previous letter, stating his knowledge of the affairs and political state of Ireland, and asking him whether his communications on the subject of the public affairs of that country would be acceptable to him. Then after



all this introductory evidence of the fact, these libels are produced in the hand-writing of the defendant. Can you doubt for a moment, that the publication was by his procurement? The case in my opinion is as clear as the evidence in the case of the Seven Bishops was disputable. Then as to the evidence of its being the hand-writing of judge Johnson, I have proved it by witnesses who have spoken to their knowledge of his manner of writing. But there are some material observations that ought not to be omitted. If this were a question whether a forgery had been committed, you would consider whether the person who was supposed to have forged the hand-writing of judge Johnson had any interest in doing so; if you feel that he could have no interest in forging it, that circumstance alone affords a presumption of its not being forged. There is no colour for supposing that the person who is stated to have forged the defendant's hand-writing in 1803, had any reason which could have actuated him to do so. The witnesses say generally, that he wrote so like the judge, it could not be distinguished. My learned friend says he is of opinion that the witnesses spoke from their honest belief, as to the libels being actually the hand-writing of the person who was in the habit of writing like the judge; and yet the witnesses themselves tell you that they do not bear any resemblance at all to it. My learned friend also says, that the first blush is most to be considered in the testimony of witnesses to hand-writing; and that when they come into court with their minds prepared to identify it, they are more likely to speak to it as that of the person to whom it is attributed. I beg leave to ask you, whether the inference is not directly the other way; and that when witnesses come prepared to negative hand-writing, they may not be actuated by an inclination, which induces them to deny the resemblance where it really exists, though it may be ever so strong.

Our witnesses have told you, that the libel is not written in the usual hand-writing of judge Johnson, but more in the style of a person endeavouring to get as much as possible into one sheet of paper. What is the evidence on the other side? That it is not so free a hand as the judge writes: if so, then it is not so free as the writing of the other person, whose hand resembles his: it is unquestionably the writing of the one or the other; it is the writing of judge Johnson, or it is the writing of Mr. Fleming, or Mr. Card. That which bears so much dissimilitude to the writing of judge Johnson, must be dissimilar to the writing of Mr. Fleming or Mr. Card. That two things which are equally alike to a third, must perfectly resemble each other, is a proposition which cannot be controverted. It is clear that one or the other must have written the libels; and yet the defendant's witnesses tell you the writing bears no resemblance to that of either of them.

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But it is supposed we have called worse witnesses than we might have produced. Upon this point I have only to observe, that although the office of the defendant, as counsel to the Revenue-board, terminated in 1801, four years ago, it is not four years since these libels were written, for they were published in 1803; but this difficulty is got over by the evidence, that the hand-writing of the defendant has not in the least degree altered from what it was when the witnesses speak to their knowledge of it. What is the remedy proposed by the defendant's counsel? that we should call people from the post-office, who were in the habit of seeing his franks. Why, though it is true he used to frank when he was a member of the Irish parliament, yet he ceased to do so in 1801 when he was made a judge. But let me ask, if evidence drawn from any source can be accurate, must not that which we have produced be peculiarly so? What proof of hand-writing can be more complete than what we have given you? We have produced to you Mr. Waller, the solicitor to the commissioners of Customs, and Mr. Edwards, who was clerk in the solicitor's office, besides other witnesses. These were persons who had constant opportunities of seeing the defendant's writing, and knowing it under every shade and aspect, whether written as he ordinarily wrote, or closer, or more diffuse. There is not the slightest imputation on the characters of these witnesses. The case of my learned friend is simply this, that they may be mistaken. If they speak falsely, they must speak corruptly. Their testimony is, however, to be compared with that of the defendant's witnesses, who say there is no resemblance between the hand-writing of the libels, and that of the defendant. Mr. Waller tells you he really believes it to be his hand-writing; the other witnesses say the same. You will weigh the degree of credit to be given to the witnesses on both sides; you will bear in your minds what they have respectively proved, and distinguish between the probability of the evidence on the one side and on the other; and I entertain no doubt, that your verdict will be perfectly consistent with the justice of the case.

#### SUMMING UP.

Lord Ellenborough.—Gentlemen of the Jury; This is an indictment against the honourable Robert Johnson, one of the judges of the court of Common Pleas in Ireland, for a libel. The first consideration is, whether the paper that has been proved (whatever may be its quality), was published by Mr. Justice Johnson? The second is, whether, if the paper was published by him, it is a libel? The latter point it may be as well to dispose of in the first instance. No question is made as to the publication itself being a libel; nor indeed could any question be agitated upon that subject, for it certainly does, in various ways, libel and traduce the king's government in



Ireland, vilifying and degrading the persons entrusted with the first offices of the state in that part of the United Kingdom, particularly the lord lieutenant and the lord high chancellor. It defames the lord lieutenant as a man only fit to be a feeder of sheep, states that his head is made up of particles of a ligneous tendency; and then, comparing it with the Trojan Horse, adds, that notwithstanding its supposed innoxiousness, its hollowness would be soon filled with instruments of mischief. As to the lord chancellor of Ireland, it degrades him in terms no less libellous; it states him to have cut off from the secretary of the master of the rolls certain fees of office, for the purpose of throwing them into the hands of a creature of his own; and it puts a very invidious contrast between the character of the lord chancellor and the late lord Kenyon. It likewise traduces Mr. Justice Osborne, and states him to have acted corruptly, under the influence of Mr. Marsden, the under secretary of state, whom it accuses of having washed his stained hands in the very fountain of justice. It contains also other language of reproach, equally defamatory, applicable to all the persons mentioned in the publication. With respect to all this, it must be quite unnecessary to detail it you; you have heard it stated at large in the opening of the case, and therefore it would be superfluous in me to repeat all the particulars at length.

There can be no doubt in the world, that it is a very gross and scandalous libel, highly injurious not only to the characters of the persons it defames, but to the government of the country. No question has been made with regard to its libellous tendency; if it had been raised, you could not have hesitated one moment. The point is then reduced to this question, whether, supposing it to be a libel, it has been published by the defendant in the county of Middlesex? There is no sort of doubt as to its having been published there; it there reached its destination, and was printed by Mr. Cobbett in his Political Register; the only question is, whether this publication was caused by the transmission of the manuscript from Dublin? Now, whether that is brought home to the defendant, depends on the evidence, and I will state the whole of that evidence to you.

The noble and learned judge proceeded to recapitulate the whole of the evidence on both sides, *verbatim*, commenting, as he went along, on the testimony of the respective witnesses. First, as to the evidence of Mr. Cobbett, he observed, that the strict inquiry made on his examination, with regard to the covers, was to ascertain with certainty whether those covers, which were addressed to Mr. Budd, contained the libels in question. His lordship added, that it was obvious, from the evidence of Mr. Cobbett, that he had received a previous overture, on the part of the person who afterwards sent him the letters signed *Juvena*; that he noticed it, by giving it an answer in

his subsequent number; that such notice was acted upon by the author of the libels, who transmitted the letters, which appeared to have been written by the defendant; that the postscript to the letter of the 28th November recognized the antecedent letter of the 29th October, and showed that the person who wrote the last letter wrote the first.

His lordship read the letters signed *Juvena*; and remarked that the question was, whether the jury would not think themselves warranted in connecting the proposal to give the communications, with the letters which were afterwards written by somebody or other? Speaking of the second letter, he said, does not this plainly refer to the former letter? it evidently does refer to the context of the first; and the two letters being in the same handwriting, you are to determine whether they were not both sent for publication by the same person.

The next evidence, said his lordship, is that which relates to the fact of the handwriting. This evidence is necessarily coupled with the overture made to Mr. Cobbett; and the fact is to be made out by proof, that the defendant was actually the writer of the libels. The evidence on that part of the subject is what I am about to state to you.

His lordship read over the evidence of Mr. Waller, Mr. Ormsby, Mr. Nunn, and Mr. Edwards, without any particular comment, farther than that, from the official situations they held, they were persons who appeared to be every way competent to identify the handwriting of the defendant.

Having finished their testimony, he said, the libel was then proposed to be read; but a question was raised by the counsel for the defendant, as to proof of the hand-writing being proof of the subsequent publication in the county of Middlesex; and the precedent of the case of the Seven Bishops was urged in support of the objection. Certainly to have admitted, as sufficient, such proof of publication as was brought forward against those reverend characters, would have been unjust, and contrary to every known and established principle of the law of evidence; but in this case I was clearly of opinion, that the precedent did not apply; for I thought, and I still think, that the hand-writing having been proved, there was in the libel itself a sufficiency of internal evidence, to be left to you to say, whether the person who wrote it was not the person who published it. On the part of the defendant there were called, in order to negative the fact of the libel being the defendant's hand-writing, the following witnesses:—

[Here his lordship read the evidence in support of the defendant's case.]

The first witness, Dr. Jebb, would have you believe, that a gentleman of the name of Card had come forward, and said he would avow himself the author, but for his apprehensions that



his avowal would be attended with the destruction of his family. It is very extraordinary that this person, whoever he is, who writes so like judge Johnson that their writing cannot be distinguished, should have written that which is produced to-day, and stated by the witnesses not to bear the least resemblance to his character of writing; but it seems there have been some kinds of experiments made, with a view to ascertain whether another person could not write like the judge; and it is said, that after the company present had put their initials on a paper, it was taken away, and afterwards brought back, in order to enable them to give evidence, that judge Johnson's hand-writing could be successfully imitated by that person. One is at a loss to conceive why this imitation of his hand-writing should have taken place; if it were only for the purpose of having it believed, that another was in possession of the faculty of imitating his character, I do not see how it is at all consistent with that view and object, that witnesses should be brought forward to prove, that this is not like his writing in any degree. The course of the examination of the witnesses tends to the inference, that although two persons wrote so much alike that their writing could not be distinguished, yet that what is supposed to be the hand-writing of one of them, has no resemblance to the character which it professes to have imitated. The utmost of this experiment is, that in the opinion of the witnesses two persons wrote alike; but that result might have been attained by the person who made the experiment having brought into the room a brief on which judge Johnson had antecedently written, with a view to its being presented at the end of two or three hours. Whether there is any thing in this observation, it is for you to judge; but the only conclusion I can draw is, that it appears very inconsistent, that a person should be said to write so like judge Johnson, that the style of the one cannot be distinguished from the other; and yet that witnesses should afterwards come into court, and pretend that there is no similitude between their writing.

His lordship made no observations upon the evidence of Dr. Hodgkinson.

As to Mr. Archdale, his lordship still addressing the jury, said—It may be necessary for you to attend to the demeanor of this man. He has said, upon his oath, that if, upon his going out of court at this late hour of the evening, any person whom he did not know, were to ask him to walk with him to Whitechapel, he would go with him; and he also tells you, he went to a house in Dublin, only because he was not afraid to go any where: such a mode of giving evidence in a court of justice,

certainly throws great discredit on the testimony of any witness.

As to what has been told you by the next witness, Mr. Giffard, respecting lord Hardwicke's having turned him out of office because he was a Protestant, it is a libel on that noble lord's character, to suppose there can be truth in such a statement. If it were possible that lord Hardwicke, or any other man, had been base enough so to have acted, it is not at all probable that he would have been hardy enough to have avowed it, as the witness tells you he has done.

Gentlemen of the jury—this is the evidence on the one side and on the other; and in deciding whether the defendant has been guilty of the crime imputed to him, your judgment will turn principally upon the fact, whether this is or is not his hand-writing. There is one very strong circumstance which I should not omit to mention to you. It is stated that judge Johnson knows the person who actually transmitted this libel from Dublin to the publisher in this country. If he is really acquainted with this fact, it is singular, and almost incredible, that, aware as he must be of the perilous situation in which he stands, he should, from a false principle of tenderness towards the family of such a man, prefer concealing him, to the injury and utter destruction of his own character, instead of bringing him forward to meet that punishment and disgrace he so well merits, if he is the real delinquent. Having such a man in his power, and omitting to produce him, is past my comprehension. Whether it is probable, or at all reconcileable with the general experience of mankind, it is for you to say. If you believe this to be the hand-writing of judge Johnson, you will have no question to decide as to the quality of the publication, but you will find him Guilty. If, upon a review of the whole of the evidence, and comparing it together, you should be of opinion it is not his hand-writing, you will in that case pronounce him Not Guilty. With these observations, I leave the question of his guilt or innocence in your hands.

The jury retired to the judges' chamber, behind the court, for about a quarter of an hour, and returned with a verdict of GUILTY.

The trial commenced at ten o'clock in the morning, and concluded about nine at night.

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A *nolle prosequi* was entered upon this indictment in Trinity term, 1806, by the attorney-general, sir Arthur Pigott; and Mr. Justice Johnson retired from the bench upon a pension for his life.



673. Proceedings on the Trial of an Action brought by JOHN THOMAS TROY against HENRY DELAHAY SYMONDS to recover Damages for the Publication of a Libel on the Plaintiff in the Anti-jacobin Review; tried in the Court of King's Bench Westminster by a Special Jury, before the Right Hon. Edward Lord Ellenborough, on Thursday July 11th: 45 GEORGE III. A. D. 1805.

*Counsel for the Plaintiff.*

The Hon. *Thomas Erskine* [afterwards lord chancellor Erskine]—Mr. *Wood* [afterwards a baron of the Exchequer]—Mr. *Talbot*.

*Attorneys*.—Messrs. *Frogatt, Lightfoot, and Robson*.

*Counsel for the Defendant.*

Mr. *Garrow* [afterwards a baron of the Exchequer]—Mr. *Park* [afterwards a judge of the Common Pleas]—Mr. *Richardson* [afterwards a judge of the Common Pleas.]

*Attorneys*.—Messrs. *Neeld and Fladgate*.

*Court of King's-bench, Westminster,*  
*Thursday, July 11, 1805.*

**MR. TALBOT.**—May it please your Lordship—Gentlemen of the Jury—In this action, John Thomas Troy is the Plaintiff, and Henry Delahay Symonds is the Defendant. The declaration states, that the plaintiff is a loyal subject of the king, and that he has never been guilty of any kind of treason or misprision of treason, and until the publication of the libel complained of by this action, had never been suspected thereof. It also states, that the plaintiff is a person professing the Popish religion in Ireland, and that he there exercises the function of a Roman Catholic priest, and that he is commonly known by the title of Doctor Troy. The declaration then alludes to a certain exhortation published by the plaintiff, recommending to the persons to whom it was addressed, a quiet and peaceable demeanor, and also refers to a correspondence between the earl of Fingal and lord Redesdale. It also states, that in the year 1798, there was a dreadful rebellion in Ireland, and that on the 23rd of July, 1803, there was an insurrection there. It then charges that the defendant knowing the premises, but maliciously intending to deprive the plaintiff of his good name, fame, character, and reputation, and to bring him into great infamy and disgrace, and to cause it to be believed and suspected that he had been guilty of treason or misprision of treason, printed and published the following libel:—

“ Lord Fingal then mentions, as striking

proofs of the loyalty of Catholics, the Address of Dr. Coppinger to his flock at Cloyne, which recently appeared in the newspapers, and the late Exhortation of Dr. Troy in Dublin.

“ Nothing affords such strong evidences of Popish dissimulation in Ireland, as the exhortations of the Romish clergy, and the loyal addresses of their flocks. They have commonly been found to be sure presages of a deep-laid conspiracy against the Protestant state; and after it has exploded in rebellion, their clergy generally lament, from the altar, the delusions of the people, and their treasonable conduct towards the best of sovereigns, and the only constitution that affords any degree of rational liberty; though from the nature of their religion they must have known, and might have prevented it. The dreadful rebellion of 1798, accompanied with such instances of Popish perfidy, must convince the reader, that no reliance is to be placed on the oaths or professions of Irish Papists to a Protestant state. Dr. Troy must have known all the circumstances which preceded the insurrection in Dublin on the 23rd of July, 1803, and yet he did not put government on their guard. The present administration are convinced of his treachery on that occasion, and yet, for many years past, he had been treated at the Castle with the utmost respect, and had even received favours for some persons of his own family. His Exhortation then, to which lord Fingal alludes, must be considered as a mockery of the state, an insult to the understandings of his Protestant fellow-subjects, and an unquestionable testimony of his want of candour.

“ By his orders, exhortations composed by himself were read in many Popish chapels in his diocese, on the morning of the 24th of July, and a few hours after the insurrection and massacre had taken place in Dublin. The reader must be convinced by the following moral evidence, that these exhortations were framed previous to that dreadful event; there was no allusion to it in any of them, and the distance of the chapels in which they were read from the metropolis was so great, as to make it physically impossible that they could have been framed, and sent to them, subsequent to that catastrophe.”



There are other counts, gentlemen, charging the libel in different forms, to the plaintiff's damage of Ten Thousand Pounds.

The defendant has pleaded that he is not guilty of this libel, and that is the issue which you have now to try.

The Honourable *Thomas Erskine*;—Gentlemen of the jury; I am much indebted to my learned friend for the clear and perspicuous manner in which he has stated the complaint which Dr. Troy makes upon this record, because by it you must already be aware of the importance of the cause you have to decide. If the solicitor-general, who was my justly successful adversary in the last cause, obtained large damages for an assault only on the person,\* how much more loudly does the present call for your serious consideration. In that case the passions of the defendant were inflamed probably from great provocation; but that was held to be but little mitigation when the plaintiff's body was wounded and disfigured; how much greater then is the injury, where there is a wounded spirit, when the injury is not done to the body but to the mind, and when the offence does not arise from the sting of provocation, but was committed in cold blood. The case I have alluded to was only a sudden quarrel, yet as it was in a public place where many persons were present, it was justly observed by the noble judge that though public example could not strictly nor directly apply in a civil action for damages, yet it could not be lamented when it had an indirect and almost unconscious effect on the minds of a jury in such a case. How much more then here when an unoffending individual has been so unjustly and publicly calumniated; but I should be myself a calumniator, if I described Dr. Troy as only innocent and unoffending, when with the highest possible merit, he stepped forth as a minister of religion in a most perilous crisis. If he had consulted only his own quiet, and preferred his own safety to his duty, he could not have been assailed by this anonymous libeller; but because possessing an extensive influence over the members of his communion, he employed it to recall the disaffected to their allegiance under the most solemn and impressive sanctions of the religion they professed, what injustice can be more disgraceful and disgusting than with the full knowledge of this exalted virtue, *to make it the very foundation of scandalous defamation*. It is this which Dr. Troy so justly complains of as a depravity of the most dangerous character.

Gentlemen, I do not wish to overstate the plaintiff's title to approbation and admiration. Indeed I am but ill qualified to become a disclaimer upon the merits of the Catholic church, being not only a Protestant, but a native of that part of his majesty's dominions where the national church may be said to be the very

contrast of the Romish communion; and its faith as described by a celebrated writer being the very protestantism of the protestant religion. We feel, and none more than myself, that nothing has more contributed to keep alive animosities amongst mankind, and to retard the great work of reformation ordained in due season to unite the whole Christian world, than alienation from those who differ from us in religious creeds. It is an evil, however, which, thank God, is most happily passing away, and Dr. Troy has always done his part to accelerate its progress. I wish to avoid all political allusions; but this I may say with truth, that though many great and eminent men in parliament have differed on this momentous subject, and although it has strongly agitated the Roman Catholics who seek emancipation, yet the controversies have been every where discussed with exemplary moderation; and of this I am also confident, that whatever may have been the opinion of the lord chief justice on this subject, and though adhering to the opinion he delivered in parliament, he will nevertheless tell you (as his country has a right to expect from him), and impress it upon your attention in the decision of the matter now before you, that Dr. Troy, though a Roman Catholic, and as such holding tenets different from himself and from you, is entitled to the same measure of justice as any other man however distinguished by his zeal for the religious system which all of us profess. If Dr. Troy, instead of a sincere Christian teacher, had been a traitorous hypocrite, secretly wishing for resistance to authority, as has been wickedly imputed to him by the defendant; if he had been, in fact, an abettor of rebellion, instead of a dissuader from violence, making use of his religious station as a cloak only to conceal his real disposition, the truth of this might have been pleaded as a justification, and being proved, the defendant must have had a verdict; but no such plea having been put upon the record from the consciousness that it was incapable of proof, the plaintiff stands before you in point of law, what he is known to be in fact, an innocent and meritorious person.

In actions for libels and defamation I have often said, and I now repeat it, that no money can be a compensation for calumny—character cannot be compounded for by money; if a slanderer, instead of putting me to the cost and trouble of an action, were to send the largest sum to my bankers, should I be happier on that account, when my estimation in the world was tainted? it is therefore an imperfection in our law, but for which there is no remedy, that neither criminal nor civil justice can restore to the calumniated sufferer what he has lost. All that your verdict can do, and *that* you will take care it *shall* do, is, that the reproach, and your judgment of its falsehood, will go down to posterity together; so that whoever shall read this Anti-Jacobin Review hereafter, will know at the same time

\* Alluding to an assault at the Opera-House tried just before the present cause.



that the plaintiff's reputation had been vindicated by a British jury from its scandalous injustice.

Gentlemen, Dr. Troy is a Roman Catholic priest, and titular archbishop of Dublin. The government of England is tolerant, and though its indulgences have advanced by slow degrees, yet the Catholic and Protestant world have of late been drawing much nearer together. It is a delicate subject to touch upon. The ways of Providence are awful and mysterious throughout the whole course of this lower world. We see bitter contests and sanguinary conflicts arising out of a religion established to give peace upon earth, but in the same manner nature, through all its stages towards perfection, produces a turbulent commotion in its discordant parts; but we know that in the end there will be universal harmony in the Christian world. In the mean time it is most difficult to reconcile differences of religious faith—it is impossible at once to amalgamate mankind. It is our duty to adhere to our own establishment, but the law has in its wisdom exacted no professed mode of faith from its subjects. We have a variety of dissenting sectaries, differing as much from each other as the Church of England from them all. But the law protects them equally in their worship, though some incapacities are enacted; and so the Protestants thought when they told queen Elizabeth that no Roman Catholic of Ireland should be styled archbishop of Dublin, and an act of parliament then declared it to be criminal to usurp such an appellation; but there is no Irish statute which calls for the education or the profession of children in the tenets of the Established Church, and differences of religious faith are likely therefore long to continue under the mild sanctions of a free government; yet thank God we have, and ought to have but one object as to civil dominion. We are engaged in war with the most accomplished and powerful enemy we ever had to deal with, but we have nothing to fear if we are united. He knows and feels that discord alone can destroy us; and thinking that Ireland is the heel of the Achilles, the only vulnerable part of our widely extended empire, he exerts every influence to reach it, and it becomes therefore a corresponding duty in us to guard it against his attacks by healing animosities and cementing together all classes by every practicable indulgence, and by a faithful and equal administration of justice, of which you will to-day set a useful example. Many of you have, no doubt, opinions unfavourable to Catholics; but Protestants and Catholics are as one in a court of law, and in the person of the plaintiff you will see that honour, patriotism, and truth, are to be found in the one class as in the other.

Gentlemen, you must no doubt have observed, that many noble persons of Ireland have appeared upon the bench; but not wishing to detain them to their inconvenience

they have been allowed to withdraw, lord Fingal being sufficient for my purpose as a witness. I have requested his lordship to remain, as this Anti-Jacobin Review, in most inflammatory terms, introduces its libellous attack on Dr. Troy, by adverting to a correspondence between that noble earl and another noble lord then at the head of the law in Ireland, a correspondence which is much misrepresented and distorted, and the reasoning on it highly injurious. Opinions are given in this publication, and illustrated by assumed examples to justify apprehensions of danger from the Roman Catholics, and as far as they are general and in the abstract, I have no privilege to condemn them, however false. Men have a right to argue as they feel upon the policy of yielding to papists more or less influence in the state; all this is undoubtedly the subject of free and fair discussion, and whatever inconvenience or injustice to individuals may sometimes attend it, yet freedom of discussion ought to be held sacred—to this the world owes its advancement. Perhaps a collision in discordant parts is necessary to bring about a state of rest and harmony in the end; for that cause we all have an unquestionable right to comment upon the various systems civil or religious, which distinguish and divide mankind, and to consider their bearings upon our happiness—we have a right to try them, and to publish our opinions on the probable effects of any particular mode of worship or of faith—nothing like this we question or complain of—our charge is, that instead of this *general theory* as it regards all men, the defendant applies the most dangerous principles and conduct to an individual as matter of fact; and this not only without evidence, but contrary to the most positive proof; and he then proceeds to arraign Dr. Troy even upon a subject of opinion which no longer exists—I mean on the danger of French principles. A change had taken place in the government of France, which had produced a great effect throughout Europe. There is now no false liberty held out to the thoughtless amongst the lower orders of the people, no false lights, no ignis-fatuus to mislead men to their ruin; we have seen in France all kinds of government leading to no improvement or stability, and ending at last in a despotism devouring all the rest. The fascination of French principles had necessarily therefore ceased before this libel was published, and can scarcely return in our times. I have only adverted to this to prove that any hopes of connection with France, by a public profession of her political principles, were at the time in question utterly extinguished, as you will now see from the short history of the case before you.

There was, you know, an extended insurrection, or more properly speaking, a rebellion in Ireland, not of Catholics only, but of Catholics and Protestants united, and which proceeded at last to a height which cannot be reflected upon, or stated without pain and horror. I am sorry



to be obliged to recall the remembrance of it. It was a scene of indelible disgrace to its actors, in which the most hideous atrocities were committed, and in which that venerable and excellent person, lord Kilwarden, who filled the same station on the bench of justice in Ireland that the noble and learned judge does here, was murdered in the public streets of Dublin. It is a disgusting subject, and I trust the memory of it will pass away, leaving no other trace behind it but the penitence of its perpetrators. At that time, gentlemen, Dr. Troy had a great and just influence over the numerous members of the religion he professes—for how could so much piety and learning not possess it wherever it was known? he thought therefore that he might be useful in quelling a spirit which had recently appeared, and which had produced effects so dreadful, by an address to his Catholic followers, reminding them that they were then resisting a mild and beneficent government, to which they owed a temporal allegiance, but also against their own ancient and apostolic church, which condemned and must punish them. He addressed them, gentlemen, with more zeal and fervor than is, I am sorry to say, always to be found in the preachers of our Established Church, and with more probability of effect; as it is a well-established fact that the Catholics are more under the influence of their pastors than the Protestants, their flocks regarding them as the representatives of the primitive church. Surely therefore Dr. Troy was entitled to the greatest praise for his exertions; and even if his zeal was offensive, it might at least have escaped censure. It was on the very day following that horrid and disgraceful catastrophe in the streets of Dublin, that this pious exhortation was communicated to the numerous body of clergy, under his direction; having in their turns a most extensive influence, and who immediately published it amongst their numerous and widely-extended flocks, so that its influence may be said to have spread at one and the same moment over the whole Catholic communion in that distracted country. [Mr. Erskine here read part of the exhortation, dated Dublin, July 24th, 1803, signed by Dr. Troy himself.]

Gentlemen, this pious, benevolent, and patriotic exhortation was circulated, as will appear by the evidence, in the widest possible extent; breathing, as you must feel, the most exalted sentiments; inculcating the love of God and obedience to the laws, and reprobating violence as contrary to the divine precepts of the holy religion they professed; and so far was he from disconnecting this communication with the government of Ireland as administered at the very period in question, that he makes use of it to strengthen his advice, for such was the mildness of lord Hardwicke's administration, that Mr. Emmet declared on the scaffold, as Mr. Wickham, now sitting by the lord chief justice, can testify,

that the reason for that insurrection being then excited was, that if not then commenced it would be too late, as the spirit of disaffection was from the lenity and justice of the government declining. Could any thing, gentlemen, more strikingly manifest the honest zeal of this reverend minister than availing himself of this crisis in his pious charge, which is without example throughout for its seasonable, eloquent, and fervid spirit. He lays the foundation of it in the religious duty of his followers, and warns them against the miseries of tumult and uproar by a true history of the French revolution, degenerating from specious but false doctrines, destroying all the energies of government, and under the banners of ignorant and unprincipled leaders subverting the freedom which so much blood had been shed to obtain, overthrowing and desolating other nations, whilst they were undermining the prosperity of their own. Here again, gentlemen, I must take the liberty to recite the language of this venerable person, to whose sentiments without referring to it, I am unable to do justice. [Here Mr. E. read from the exhortation, beginning with "*the horrid scenes of last night*," and ending with "*such is the freedom of that once happy country*."] ]

Gentlemen, if this had been written by any common man, having no influence over others from established pre-eminence or popularity, by a person who until then had been obscure, its truth and justice, the force of its reasoning and its eloquence, would have brought its author into immediate notice. If it had been read even by a beggar in the street, he would have been rewarded as a friend of his country at such a critical period, by a prudent government. Now, if this be so,—and it is impossible to deny it,—how atrocious is this attack upon him. If to have passed by such merit would have been invidious, how desperately wicked to make it the very foundation of abuse. I have several letters from persons high in office, particularly from lord Chichester (late Mr. Pelham), whose absence I lament, in which that distinguished person, then in Ireland, bestows on Dr. Troy's exhortation his valuable applause; for as every word which falls here from his lordship will come with much more force than from us who speak from the bar, so the influence of this reverend gentleman, then a titular archbishop, was sure to be more regarded than if it had proceeded from an inferior source; it came from an eminent man to an admiring multitude—not from an author to his equals, but from a pious pastor to an enthusiastic flock; and it is not surely for this libeller, after his charges against the Catholics, to deny that the higher priests of their communion have a most powerful influence over their inferior clergy as *these* have in their turns over the people. It follows therefore that he must be driven to admit that the influence of Dr. Troy's precept was in proportion to his eminence amongst those to whom it was addressed. Every thing that



came from his pen, the defendant cannot but acknowledge had the sanction of high and regular authority, and was sure to be attended to with conviction and respect.

To judge of its merits, let us consider the probable results of an effort to a contrary effect. Suppose, instead of this pious exhortation, he had held out that there were many things in the new government of France well worthy of our imitation. That taxes in England were heavier and more numerous, and that we had deviated in many respects from those wise principles of our ancestors, by which our country had arisen to such an eminence amongst the nations of the earth. If he had written this, so obviously calculated to alienate affection from the state, would he not have been subject to an indictment? and shall he not then, when in the hour of danger he exerted all his faculties and influence to rouse the spirit of those under his direction to inculcate obedience to God and loyalty to the King, recalling the disaffected to the temper and disposition of faithful subjects,—shall he not be protected by the laws of this mighty and united empire? Shall he for acts the most meritorious be the victim of malicious and unpunished defamation? Shall this be the reward of a man who, for the purpose of quelling a rebellion, thus seasonably addressed his country?

[Here other parts of the exhortation were referred to by Mr. Erskine.]

Gentlemen, as soon as the exhortation was penned by Dr. Troy, it was printed, published, and extensively circulated, and great public benefit attended it. Lord Fingal, who now sits on the bench by lord Ellenborough, a person of great rank in Ireland, eminent from his talents and respected for his virtues, feeling the great advantages which had followed from it, and which it was likely further to produce, alluded to it in a correspondence between himself and the noble person, then at the head of the law in that country. Of the exhortation itself, you have now full knowledge, and have only to look at the return he received for it. The author of this libel begins thus:—"Nothing affords such strong evidences of popish dissimulation in Ireland as the exhortations of the Romish clergy and the loyal addresses of their flocks. They have been commonly found to be sure presages of a deep laid conspiracy against the Protestant state; and after it has exploded in rebellion, their clergy generally lament from the altar, the delusions of the people and their treasonable conduct towards the best of sovereigns, and the only constitution that affords any degree of rational liberty, though from the nature of their religion they must have known and might have prevented it."

Now if the libel had stopped here, though I should have considered the author as an enemy to the public peace and security by so gross an insult to the Catholics of Ireland;

though at that alarming crisis it was wicked to agitate them by attacking their tenets and reviling their priests; yet Dr. Troy could not have appeared as a plaintiff before you: but he advances afterwards to Dr. Troy as an individual, and publishes that he must personally have known all the circumstances which preceded the insurrection in Dublin on the day before the date of the exhortation, yet that with treasonable misprision he did not put government on its guard, and that the administration was convinced of his treachery.

"The dreadful Rebellion of 1798, accompanied by such instances of popish perfidy, must convince the reader that no reliance is to be placed on the oaths or professions of Irish Papists to a Protestant state. Dr. Troy must have known all the circumstances which preceded the insurrection in Dublin on the 23rd of July, 1803, and yet he did not put government on their guard. The present administration are convinced of his treachery on that occasion, and yet for many years past he had been treated at the Castle with the utmost respect, and had even received favours for some persons of his own family. His exhortation then to which lord Fingal alludes, must be considered as a mockery of the state, an insult to the understandings of his Protestant fellow subjects, and an unquestionable testimony of his want of candour."

Now, gentlemen, I ask you, what compensation ought to be made to Dr. Troy (which you are upon your oaths to decide) for a calumny of this atrocious description which the malignity of a demon could only invent, and which, not having attempted to justify it as the truth, Mr. Symonds admits to be wilfully false? What indeed can be more atrocious than to impute to a minister of religion, in an hour of national peril, that he had secretly fomented rebellion with an exhortation cut and dry to deprecate and lament it afterwards? If I had to portray a fiend of the most horrible and disgusting description, I should describe him as this libel represents Dr. Troy; as aware of impending treason, but traitorously concealing it, and after its murderous perpetrations, employing the hallowed office of the priesthood to condemn it. This is the slander of which the plaintiff complains, and on the subject of damages you have only to ask yourselves this question; What would you yourselves expect from a jury, if you were thus traduced, and obliged to come from a remote part of the empire to vindicate your reputations? Whatever you feel in such a case were it your own, gives the rule for what your verdict ought to be; however he may be a sufferer from the trial being here and not in Ireland, where he is universally known and respected, yet he has the satisfaction of submitting his case to a tribunal aloof from all those animosities which have locally prevailed in Ireland, confident that in the center of this United Empire he will receive that justice of which the example



is so essential to extend its influence. You will prove by your judgment that though other states and kingdoms may enjoy advantages in the natural world which we do not possess, yet that in the moral world we are superior to them all; and as this is the first case in which a Catholic clergyman appeals from one part of the empire to a Protestant tribunal in another, you will distinguish it also by the purity of the decision.

Gentlemen, I conclude with expressing my acknowledgment for the attention I have received from the Court. One thing, however, had nearly escaped me, which I wish not to pass over without further notice, as in the commencement of my address I only alluded to it. Though this is, as I have just said, the cause of a Catholic priest before a Protestant tribunal, yet remember that it has no manner of concern with the great question of state, so often and so lately agitated in the public councils. The Catholics are convinced of the justice of their claims, to fill all the offices of the government to which other subjects are eligible, but they claim them only as subjects from the state. They desire to be obedient to the laws and submit to their condition, until the laws shall in their favor be changed, which they confidently hope is an event close at hand, and I hope so also; it is not only a natural wish in a Catholic, but a duty to the faith he professes, to watch every occasion of renewing his claim to be placed upon the same footing with other subjects, whilst he subscribes to all the civil institutions of the realm.

## EVIDENCE.

*Charles William Auber* sworn.—Examined by *Mr. Wood*.

Have you got the Anti-Jacobin Review for July, 1804?—I have.

Where did you purchase it?—At Mr. Symonds's shop in Paternoster-row.

Whom did you purchase it of?—Of a person serving in the shop.

Will you give it in, sir?

*Lord Ellenborough*.—You purchased it of a person who appeared there to sell books in the shop?—Yes, my lord.

[The book was then delivered in for the different passages stated as libels in the Declaration to be read by the officer.]

*Mr. Erskine*.—Will you read in page 325, beginning "Lord Fingal then said"?—

*Mr. Garrow*.—My lord, perhaps I may save some time by what I am about to submit to your lordship. In the view I take of this subject, it will be necessary that the whole of this book should be read to the jury; sooner or later that must be done. My learned friends, who are of counsel for the plaintiff, will do as they please; they have a right to make a selection only; but this I submit to their discretion, by way of saving time; I have no choice as to the mode; I will declare at once that

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my object is to show to your lordship and the jury, that this publication is nothing but a critique on the whole correspondence between the two noble lords whose names occur in it so frequently.

*Mr. Erskine*.—Let the whole be read; I have no objection.

*Mr. Garrow*.—That, I think, will be the more convenient course, for the publication itself will make a material part of my address to the jury.

[The officer of the court then read that part of the Anti-Jacobin Review for the month of July, 1804, which related to the observations on the correspondence between lords Redesdale and Fingal.]

*Captain Cole* sworn.—Examined by *Mr. Talbot*.

You are an officer in the army, I believe, sir?—I am, sir.

Were you in Dublin in the year 1803?—I was.

Was there an insurrection in Dublin in that year?—There was.

In what month of the year was it?—It was on the 23rd of July, 1803.

*Patrick Wogan* sworn.—Examined by *Mr. Wood*.

You are a printer, I believe, are you not?—I am.

You live in Dublin, I believe?—I do, sir.

Look at that manuscript [giving the witness a written paper].

Did you print that Exhortation, sir?—I did, sir.

Did you print many copies of it?—I believe about 80, or something that way; I printed as many as Dr. Troy thought he had parish priests in his diocese.

*Lord Ellenborough*.—Had he that number?—Yes, 80, and more, I believe, but I am not certain of the number.

Cross-examined by *Mr. Park*.

You are a bookseller as well as a printer?—I am a printer and bookseller also.

So I thought.—Yes, I am.

Dr. Troy was the author of that paper?—I am sure he was.

You sell books there, of course. Did you sell Reviews as they came from England?—No; I am rather a wholesale bookseller.

Do you know that that Review [giving him the Anti-Jacobin Review in question] came over from England to Ireland?—Indeed, I do not.

Is it circulated as it is with us—it is the Anti-Jacobin?—Indeed, I suppose it is, sir.

Have you seen it in Ireland?—No, indeed, sir, I have not; I never go into the other booksellers' shops; but when they come into mine, I sell to them.

You never amuse yourself with reading these pamphlets?—Indeed, I do not.



*Patrick Wogan* re-examined.

When did you receive that manuscript from Dr. Troy?—On the morning of the 24th of July he sent it to me, and on the Monday following I printed it.

Lord *Ellenborough*.—Which was on the 25th?—Yes, my lord.

[Here the Exhortation was read by the officer of the court, dated Dublin, Sunday, 24th July, 1803.]

The Earl of *Fingal* sworn.—Examined by Mr. *Erskine*.

Lord *Fingal*, you are of the Roman Catholic persuasion?—I am.

And dwell in Ireland?—I do.

Is that which has been just now read by the officer of this court, the Exhortation you alluded to in your lordship's correspondence, taken notice of in the publication which has been read? Is it the Exhortation your lordship alluded to?

Mr. *Garrow*.—The allusion of the noble earl is stated to have been in the course of a correspondence; that allusion is a particular allusion of the noble earl, and a specific one, in writing, and we cannot have that allusion proved in this way. There is an allegation that the noble earl made allusion in a letter written by him to another person of high rank and consideration; we can hear nothing of that letter unless it is produced.

Lord *Ellenborough*.—The allusion was in a letter, you say?

Mr. *Erskine*.—When the libel itself, which has been read to your lordship and the jury, is, as my learned friend, Mr. *Garrow*, himself states it, a commentary on that correspondence which took place between lord *Fingal* and lord *Redesdale*, I submit to your lordship, that the noble earl now under examination, may be permitted to give evidence of his allusion to that Exhortation on which so material a part of the correspondence was founded.

Mr. *Garrow*.—My lord, my objection is this: a certain printed paper, which is called a Libel, has been read in evidence; another certain written paper is also read in evidence; an allusion is said to have been made to that paper in writing; that allusion is stated to have been made by the noble earl now under examination; my objection is this—that such allusion, whatever it was, was contained in a letter written by the noble earl, and that, therefore, no proof can be given of it by parol.

Mr. *Erskine*.—Was it the Exhortation of Dr. Troy your lordship alluded to in your correspondence with lord *Redesdale*?

Mr. *Garrow*.—That is the very thing that I am objecting to.

Lord *Ellenborough*.—We must see the letters, certainly, or hear nothing about them. Has lord *Fingal* got the letters?

Mr. *Erskine*.—No, my lord; your lordship

will deal with the observation I am about to make, as it is fit it should be dealt with, but it is my duty to make it, and it arises from the course taken in reading the whole of the libel. I apprehend, that as this libel is what my learned friend stated it to be, "a running commentary on the whole correspondence" which took place, by letter, between lord *Fingal* and lord *Redesdale*, and as the libel itself takes upon it, as I may say, to refer to all the letters written by lord *Fingal* to lord *Redesdale*, and which letters are stated in the libel itself to allude to the Exhortation of Dr. Troy, and to incorporate, as it were, the words of that Exhortation, I have a right to ask lord *Fingal* the question I proposed. In their libel they say this: "Before they advert to any of the particulars, they think it right to observe, that the letters addressed by lord *Redesdale* to lord *Fingal*"—that is in page 317.

Lord *Ellenborough*.—Correspondence between lord *Redesdale* and lord *Fingal* there cannot be, as here stated, except the species of correspondence which consists in their having written to one another.

[Here Mr. *Erskine* read the words in the *Anti Jacobin Review*, 317; and also words in page 319, on the subject of the obligation which the Catholics of England owed to lord *Redesdale*, and lamenting that his lordship should have the opinion he has of the Catholics, who said, that the Catholic opinion is the same every where; and then adverted to page 321, where lord *Fingal* observes, that the Catholics expected a full share in the constitution, &c.; and then alluded also to that part of lord *Fingal*'s correspondence which referred to the Exhortation of Dr. Troy; and also to that part of lord *Fingal*'s letter in which he said that lord *Redesdale* had pleaded the cause of the Catholics.]

Now, my lord, said Mr. *Erskine*, supposing it could not be necessary, or perhaps not fitting, that the whole of those letters should be read, as we cannot have the benefit of the testimony of lord *Redesdale*. (Indeed, without his majesty's permission, he could not come from Ireland, and therefore we are prevented from giving the whole of the oral testimony we might have had, as well as the documentary.) Have I, therefore, not a right, my lord, to ask the noble earl, whether the Exhortation of Dr. Troy, which has been read to your lordship and the jury, was or was not the Exhortation to which the noble earl alluded? Now, the very complaint we make is, that lord *Fingal* having made that allusion, they, by denying it, have taken an opportunity of reviling Dr. Troy, and they say, that lord *Fingal* was imposed upon by his good-nature, and by his trust and confidence in the Catholic clergy; they write answers and criticisms upon lord *Fingal*'s good-nature, and on what he wrote to lord *Redesdale*; and they say too, that Dr. Troy must have known what he



wrote, not to be true. I therefore submit, that under all these circumstances, I am entitled to ask the noble earl, whether he alluded to the Exhortation of Dr. Troy?

Lord *Ellenborough*.—Will you read the allegations on the record?

Mr. *Garrow*.—The allegation is this [reading the words of the declaration]: that, late before the printing and publishing of the malicious, scandalous, and defamatory libel, hereafter mentioned, the earl of Fingal had, in a certain letter, written, or caused to be written, by him, the said earl, to lord Redesdale, alluded and adverted to the above-mentioned Exhortation, so written, composed, and published, and caused, &c. to be written, composed, and published, by the said plaintiff, in Dublin, &c. as aforesaid.

Now, my lord, I have never heard an objection stated, in which I had more confidence, than that which I am now pressing before your lordship. The language of this declaration is, that the noble earl, now near your lordship, had written, and caused to be written, to lord Redesdale of which there is no evidence, and can be no evidence, but by the production of the original letters; an allusion is made to the absence of an eminent person, at the head of our profession in Ireland; my lord, if his attendance had been thought by him to be essential to the administration of justice, I am sure he would have attended; and I am sure also, that no obstacle would have been thrown in his way. As to the passages in any supposed letters of lord Fingal, they do not profess to have seen any manuscripts of lord Fingal; they advert to certain letters in print, from Dr. Coppinger. If they printed any thing of the correspondence we have seen, I am bound to believe they printed it entirely without the authority of the noble earl. I am bound to suppose, out of respect to the noble earl, that they have introduced into the world, under the title of the Correspondence of that noble earl, interpolations not at all justified by the signature or authority of the noble earl, now upon the bench. What is alluded to, by way of correspondence of the noble earl, is, what I am bound to consider as a mere printed paper of supposed letters of lord Fingal;—that somebody has printed something, purporting to be letters of lord Fingal, not delivered at all to lord Redesdale, but which, in point of fact, are falsely alleged to have been delivered to lord Redesdale; and this shows the great injustice, as well as inconvenience, to make any allusion to a thing, without having the whole of it before us, so that it might be read, as the publication proved has been read, by the officer of the court. So much for the inconvenience of talking of allusion to things, that are in themselves not genuine; but I am, at present, on a pure dry question of evidence, and my objection to asking the noble earl the question proposed by my learned friend is, against giving evidence by parol of a written document.

Lord *Ellenborough*.—The allegation in the declaration is, “that lord Fingal had, in certain letters, written, or caused to be written, certain matters therein specified.” Now, in order to verify that allegation, we ought to have before us these letters. I am going with Mr. Erskine as far as I can; but as soon as we hear any thing of that which is in writing, we cannot proceed without that writing. I cannot hear, therefore, of any thing in the shape of letters, between these two noble persons. If, indeed, we had evidence that these noble lords had, as some people, I understand, are in the habit of doing, destroyed their correspondence, then evidence by parol might be received concerning it. As to the allegation in the declaration, whenever it is specific, it must be established by specific proof.

Mr. *Erskine* here adverted to several counts in the declaration, with a view of showing, that this species of proof could be received, saying—As we do not take upon us to aver, what the allusion of lord Fingal to lord Redesdale was, only that he alluded to the exhortation of Dr. Troy, without saying it was in this manner, or in that manner, only stating that he did allude to it—

Lord *Ellenborough*.—Whatever allusion was made by lord Fingal, it was in writing, and it would be breaking in upon the clearest and best established principles of law, to give parol evidence of any thing that is in writing. When any thing is done in writing, that act so done, must be proved by the production of that writing.

Mr. *Erskine*.—I submit to your lordship, Whether it is not proof as against this defendant, who has recognized the fact, by his own act, for he states the fact, that the allusion was made.

Lord *Ellenborough*.—That is proof against him that some allusion was made, but what that allusion was, we cannot hear, when we find it is in writing, without the production of that writing. You may take the fact, that lord Fingal made some allusion, and that he made that allusion in writing; but before you can stir one step further, on that subject, you must produce that writing.

Mr. *Erskine*.—He may have alluded to it, by parol.

Lord *Ellenborough*.—That lord Fingal can tell us. If his lordship said he alluded to any, by parol, it either may, or may not be evidence; but, if he says it was by writing, we cannot hear any thing further of it, without the production of that writing. I cannot get over the rule of evidence; but you do not want that proof, Mr. Erskine?

Mr. *Erskine*.—Lord Fingal had several personal interviews with lord Redesdale, as well as correspondence by letter; I will, with your lordship's permission, ask that question.

Mr. *Garrow*.—And when that question is asked, I shall most assuredly object to it, and with the greatest confidence that I shall be



sustained in my objection by the judgment of your lordship, and my confidence is the stronger, because I have your lordship's judgment already to the greater part of this subject. There is no pretence for saying, that when the writing now before us, which is called a libel, refers to an allusion in a correspondence, between two noble lords, it is not by letter.

Lord *Ellenborough*.—I do think that species of evidence is excluded, for the allegation in the pleadings, refers to a letter, whether written or printed no matter.

Mr. *Erskine*.—If my lord Redesdale were here, I should have no difficulty upon this subject, but I must struggle as well as I can without his testimony.

Lord *Ellenborough*.—You should ask whether the plaintiff in this action, is known by the appellation of Dr. Troy?

Mr. *Erskine* to lord *Fingal*.—Is he known by the appellation of Dr. Troy, my lord?—Yes.

Is he a minister exercising the functions of a Catholic priest, in Ireland?—Yes, he is.

Was your lordship from the reading of that Exhortation now in court, acquainted with its nature?

Mr. *Garrow*.—I object to this Exhortation being spoken of, unless lord *Fingal* will say that he knows this identical paper now produced, is the one to which he alluded.

Mr. *Park*.—There is no allusion to this identical exhortation at all, in the count of the declaration on which they rely.

Lord *Ellenborough*.—Then you will go on with the examination of lord *Fingal*.

Mr. *Erskine*.—Does Dr. Troy inculcate the doctrine of the gospel, according to the forms of the popish church?—No doubt, he does.

Mr. *Erskine*.—Then I am to understand, your lordship is of opinion, that I cannot ask lord *Fingal* the question I proposed, about the Exhortation?

Lord *Ellenborough*.—I think you cannot.

The Earl of *Fingal* cross-examined by Mr. *Garrow*.

When your lordship first saw the Anti-Jacobin Review, in which these passages are contained, I think it was here, my lord?—I think it was.

Did your lordship see it in Dublin?—No, I did not.

You did not see it in Dublin?—No, I think not.

Is your lordship sure of that?—I am sure I did not.

Mr. *Erskine*.—I cannot carry that part of the proof further, my lord.

#### DEFENCE.

Mr. *Garrow*.—May it please your lordship—Gentlemen of the Jury—My learned friend, who has been so long and so often distinguished for the conduct of causes in this and many other places, especially where repu-

tation is concerned, has expressed, with considerable emphasis, that he felt great anxiety in this case.---Now, gentlemen, I can assure you, without the least affectation, I feel great anxiety too, that the defence of this client of mine has fallen into my hands, not that, even in my hands, am I alarmed for the result, but that I feel it would, in the hands of others of my friends, be better conducted, and, therefore, could I have wished that this task had fallen to the lot of another, not however that I mean it may not be performed here even by me.

Gentlemen, my learned friend has introduced the plaintiff to you, as a distinguished person in that part of the United Kingdom, which we once called the Sister Kingdom, which now, thank God, is closely united with us; and he said in the middle and the conclusion of his speech, with strong emphasis, that which conveyed to my mind, pretty plainly, an intimation of a fear that his client would not meet with, what he, however said, he was assured he would meet, a fair and impartial hearing, and equal justice, to which he is most indisputably entitled. My learned friend said, that in all other cases, he expected that my lord and you would do justice; I know that both he and you will do justice in this, as well as in all other cases, but I know of no distinction that entitles the present plaintiff to more attention than any other suitor of this court, and I know he will receive as much, both from you and the noble and learned lord, whose abilities we have now for a considerable time witnessed in the administration of justice, which I hope he will long continue to administer, as he has, I know, in all cases, administered according to the best lights of his lordship's understanding, on the size and character of which, I will, at present, say nothing, because I cannot advance, by my opinion, the esteem which all who know him, have for him. We may rest assured, we shall have every thing from that noble and learned judge, which the best lights operating upon the most perfect integrity can give; in this, as in all other cases, you, gentlemen, will have his lordship's faithful assistance.

My learned friend says, that you are, all of you, Protestants, and may therefore, entertain prejudice against this gentleman on account of his religion. If, by prejudice, my friend could mean that sort of feeling which may have an undue effect on the determination of this cause, I am sure you have none, nor do I desire you should have any such. I do not ask, I do not desire your verdict on any such ground; I do not ask it on any ground but that on which equal justice is dealt out to all his majesty's subjects; I ask a verdict upon no other ground than that my client is not that calumniator which, my learned friend, for the purposes of his cause, has thought fit to represent to you that he is, but that he is a person of a very different description, and entitled to a very different consideration.



Gentlemen, my learned friend tells you, that Dr. Troy is an unoffending and peaceable individual; nor was that all, for my learned friend said, he should himself be a libeller, if he stopped there. Dr. Troy, he told us, was not only an innocent, unoffending, but also a meritorious individual, entitled to great consideration, possessing the esteem of all who knew him, and highly respected by all who ever heard of him. Gentlemen, I do not stand here to declaim against Dr. Troy, nor to travel out of this cause to take any notice whatever of him, or to insinuate that he may be calumniated with impunity; it shall not be said, that for the purpose of obtaining a verdict for my client, I took an opportunity of attacking the character of Dr. Troy. He may be of perfectly fair character; I will go further, and admit that he is, without knowing any thing of the fact; I will gratuitously admit that he is a perfectly good member of society, and that, by his virtuous disposition, and the tenets of his faith, he has gained the confidence of the noble earl, now sitting on the bench by my lord chief justice. That he is an honourable man, of great consideration in Ireland, is a matter upon which I will have no dispute; further I will not go, until you deliver your verdict. That Dr. Troy, as a citizen, is a meritorious individual, I am not inclined to deny; it is only as a Roman Catholic clergyman, and in that view too, only on the tenets of his religion, and the effect that may have upon his flock, that he is taken notice of at all in the paper which has been brought before you, as matter of complaint on behalf of Dr. Troy. You would wonder, perhaps, that we should request the whole of that paper to be read; not only was it fit, however, we should make that request, but it was our duty to do so, and yours, in administration of justice, to hear the whole of that paper read, before I had an opportunity of addressing you; because, it is by hearing the whole of the paper, you can develope the intention of the writer.

Gentlemen, my learned friend, Mr. Erskine has, on this occasion, with that blaze of eloquence, which he has no difficulty in introducing, for the benefit of his client, at any time, brought before you, subjects, which, although, in the way in which he treated them, they were engaging, have no more relation to the subject, I should not say, no relation to the subject, because, I do believe, and I trust, I shall make you feel, that they had every thing to do with the subject which was meant to be brought before you, although in strictness, they had no more to do with the issue you are called upon to try, than with any foreign matter which has been mentioned in this court, this day; I say then, that these topics, so foreign to the issue you are sworn to try, have every thing to do with the real cause of bringing this matter forward; for, damages to Dr. Troy, for the injury he has sustained, by the publication of which this de-

claration complains, and which it denominates a libel, is the last thing the real parties in this case have in view, by bringing this action before you. My learned friend told you as a matter much to be desired, as "a consummation devoutly to be wished," that the day may arrive (and the disposition of those who have had the government of mankind, has always tended towards it) when we shall all be drawn into one mode of belief, that there is a tendency in the moral world, to that effect, when we shall, by degrees, being drawn closer and closer, at last become (he did not so express himself, but what he said was to that effect) as it were one flock under one shepherd, that we shall all be of one mode of faith, without pretending to say what mode of faith that may be, or what it is for the general interest of mankind it should be: I have no difficulty in saying, I know what mode of faith his client hopes it will be, and that, by the extirpation of all other modes, it is the Roman Catholic faith—that is the mode of faith which he hopes we shall all have the benefit of enjoying; this I am warranted in saying, because they have now, not only in Ireland, where they are so numerous, but in England, where they are comparatively so few, societies industriously employed in the propagation of their faith, and the making of proselytes, for which I find no fault with them, for, as they are persuaded of the purity of their faith, their zeal for its establishment is laudable. They stand much higher than we do, on the ground of industry, and, I believe, they have reason to congratulate themselves on the success of their endeavours, in making proselytes: as they are themselves convinced it is the only true mode of faith, that it is the true religion, and that it is matter of duty in them, to omit no means for its propagation, it is natural to expect, that they should improve every opportunity that offers to extend it, as widely as possible. I hope, however, that our reformed religion, as we take the liberty of calling it, by which we have renounced, what we heretically perhaps, call the "errors of the church of Rome"—I hope, that the mode of worship now followed by the established church of England, will continue long enough to out-live me, and that I shall not be one of the number who are to be brought under the superior lights of the Catholic religion. I am content with the mode of worship of the church of England, such as it is, and to it I am determined to adhere. Do not, however, let it be imagined, that I am so arrogant, so presumptuous, so vain, so silly, or so weak a creature, as to think myself qualified to condemn any person who professes the Roman Catholic religion; God forbid I should be so presumptuous: they have been brought up under the religion of their parents, they follow the same mode of faith, and I should respect a man more for professing, with sincerity, that which appeared to me to be erroneous, or superstitious, or idolatrous, than a



person who professed, but did not feel, that which appeared to me to be a better mode of worship in itself, but who, in truth, had no religion whatever. As to myself, therefore, I desire to be understood to say, that I have, most unaffectedly I speak it, great respect for many of the members of the Catholic church, with whom I have the pleasure to be intimately acquainted, but I am by no means desirous of assuming to myself any superior powers of discernment, on account of my being a member of the church of England; it is a matter of accident, which I think matter of fortunate accident, that I am of that persuasion; it is the religion in which I was educated, and which was professed by my parents. I am far from saying that I have dived so deeply into those abstruse and profound subjects, as to be able to pronounce that all those from whose mode of faith I dissent, are in error; or to say, that supposing them to be so, I can point out all the matters wherein their errors consist, but I will meddle with the Roman Catholic religion only, as it respects the subject now under discussion before you, and as it is referred to in the *Anti-Jacobin Review*, of which the plaintiff, by this action, complains, and which, in the language of this record, is stated to be written in the malignant spirit and intention of destroying the fair fame and reputation of Dr. Troy, with a view of having it believed, that he was endeavouring to promote rebellion in Ireland, concealing the guilt of those who were concerned in it, and which he knew before it happened, which is a misprision of treason. Now the question is, Was that part of the pamphlet written with that, or with a very different view?

Gentlemen, let us see a little what the record states, and imputes to this defendant. It complains of a paper which has been just read to you, setting forth—That a noble lord, now at the head of the court of Chancery in Ireland, than whom a more eminent person never filled a seat of justice, by the favour of his majesty (a favour less conferred on that noble person, than on his majesty's subjects, who have benefited so much by the appointment) was placed in that elevated situation. That noble person, with that discernment, and that humanity, for which he has been long distinguished, viewing the deplorable state of the Roman Catholics of Ireland, and having seen the inactivity of those who could better conduct themselves towards their inferiors, if so minded, considered it a fortunate opportunity he had of bringing about that reformation in the manners of the lower classes of the Catholic community of Ireland, wrote to the noble earl, now on the bench by my Lord Chief Justice, stating his opinion on that which was not doubted to be a deplorable state of the lower orders of the people there, and also, with a precision which nothing could excel the causes which produced their unfortunate condition, and stating also, in the most

perspicuous manner, the remedy for the evil, that nothing could so much conduce to the removing it, as the activity of those Catholics, who, from their rank, talents, and integrity, had an high fame among them, especially those who acted as magistrates; by whose influence, when well directed, so much might be done to the advantage of that community, and above all, that the noble earl, who was about to be invested with an office of most important trust, might be most instrumental in that great and good work. The noble and learned person to whom I am now alluding, considering these things, and being actuated by these motives, did write to the noble earl, his sentiments upon this most important subject, and he spoke with the sincerity and freedom of true friendship. This, gentlemen, was a private, confidential letter, written by one person of high rank, and most eminent station, to another of high rank also, and eminent condition in society, and a person of great influence with the Roman Catholics. This letter, thus written, with a motive the most pure and benevolent, and under the most inviolable secrecy, as it was intended not to be published, but to be acted upon—this letter, how, I will not venture to guess, but by some means or other, utterly unexplained, and as utterly inconsistent with common honour—aye, gentlemen, utterly inconsistent with the rules of good faith, without which, society cannot be held together, but without any blame, I am quite sure—I say not how it happened, but without any blame, most assuredly, of the noble earl, but, some how or other, without any reference or regard to the principles of common honour among gentlemen, these letters of my lord chancellor of Ireland, were all of a sudden published, together with the commentaries of Dr. Coppinger, of Cloyne, with various remarks. These letters became, afterwards, the subject of conversation in a great and illustrious assembly. To what passed in that assembly, I will not allude, because, it is not regular I should before you; but I feel there is reason to lament, that these letters were thus brought before the public, and, it is the opinion of the author of the article, on which you are this day to pass your judgment, that it is much to be regretted, that those who obtained them, if they fairly obtained them for a laudable purpose, should have made of them the use they did. They were sent to the chief person in the Catholic community of Ireland, in order that he might, from his high station, extend his influence among those, whose welfare was the object of the author; they were sent with that view to a magistrate, and a minister, entitled to great attention, for his character and qualities, in every respect, and they might have been communicated to another, without any breach of confidence, for they might have been given to another for the purpose of having their object accomplished; but when I recollect that the



noble earl, to whom they were, in confidence, entrusted, is so illustrious a member of the communion, to which they relate, I am well assured it never could have been the intention of the noble earl, that the private confidential communication of the Lord Chancellor of Ireland, should be made the vehicle of communication to the public, through the medium of the press; still less could it be the intention of that noble earl, to make such a communication to the public, with the commentaries of others; for that was a conduct I can never impute to the noble earl, for I cannot impute to him such a flagrant breach of confidence, of common honour, and of decorum—for these were sentiments and opinions not intended to have been published; and, I do not hesitate to state, that such a publication must have been done by stealth, and, in a manner to which the noble earl was not privy. It was a communication intended to have a favourable effect upon the objects of it—intended to make a favourable impression on the minds of the people of Ireland, but the use that was made of that communication was, to fill the heads of the people of Ireland with hatred, and their minds with animosity towards the noble lord who made it. The letters were written by a noble person, who was placed in a confidential situation by the authority of his majesty, to another noble person, who was in a situation to do a great deal of good, if the system was adopted; stating, confidentially, the opinion of that noble lord on the Catholics of Ireland, but which being published, together with comments of a certain nature, created great animosity against that noble lord, the lord chancellor of Ireland.

In this situation of things, this defendant set about to do, what we in England, have a habit of thinking every man has a right to do, namely, to comment on what had been published upon that occasion. Dr. Coppinger brought lord Redesdale and lord Fingal before the public, and the defendant commented upon the propriety of that proceeding; and, in so doing, he has conducted himself with as much moderation and propriety, in a manner as likely to contribute to the advancement of moral rectitude, of truth, and of religion, as any of our modern authors have done, as the defendant is in the habit of doing by this his publication—I speak of the *Anti Jacobin Review*, a publication, which, I will venture to affirm, has done as much good to the cause of virtue, especially on the great question of the claims of the Catholics of Ireland, as any periodical publication that issues from the press, either in this country or that. He has ventured to compare, with each other, the opinions of the two noble lords, whose letters were brought before the public, not by any officiousness of the defendant, for he found them published; a right which, nobody will dispute, he was entitled to exercise; and the only question will be, Whether he has, or has

not exercised that right with decorum?

Gentlemen, it was for this purpose, that I desired the whole of the publication complained of to be read; and now, that you have heard the whole of it, I ask you, whether at the conclusion of the energetic and eloquent speech of my learned friend, Mr. Erskine, you did not believe the publication, which he so vehemently censured, was not a violent libel, penned for the express purpose of attacking the character of Dr. Troy? that the defendant had made that publication the vehicle for the most wicked and atrocious abuse of Dr. Troy? I ask you, did you not think so, when my friend had concluded his address to you? Now, gentlemen, you have heard the whole read, I would venture to appeal to your candour on this question; is it any such thing? Supposing the general tenor of the language of this publication to be libellous, there are other characters taken notice of in it, who have full as much as, if not more reason to complain, than Dr. Troy. I think, my lord Fingal, would have full as much right to an action for a libel upon this publication, as Dr. Troy; I think he is as severely traduced in it, supposing either of them to be traduced in it, as Dr. Troy. I think, a learned gentleman at the bar, whom we all know, Mr. Plowden, has more reason still, for complaint, than either of the former two; for his four volumes of the *History of the Catholics*, are much more roughly handled, than the characters of either the noble earl or the reverend gentleman; and, we know that authors generally tender the reputation of their books, as much as they do that of their character. I am of opinion, that Dr. Coppinger would have a great deal more reason to complain, than Dr. Troy; but, of fourteen pages closely printed, of this pamphlet, and of the whole of which we have heard loud complaints, from my learned friend, Mr. Erskine, the whole is at last reduced to *four* lines in one page, namely, 325, on which my learned friend laid great emphasis, as being an atrocious libel on Dr. Troy; but in which, his name only incidentally occurs, and in which it is, as it were, casually introduced; but, as to the rest, there is no evidence whatever, to support the plaintiff's case. In one part, the defendant is charged with having made use of some argument with respect to the loyalty and fidelity of Dr. Troy, his sincerity respecting the advice he gave to the Catholics of Ireland. In consequence of something that was done by Dr. Troy, and, on the nature of the address of Dr. Troy, the defendant proceeds to make observations upon that subject. But, it is most extraordinary, and cannot have failed to have struck your minds as such, that Dr. Troy's appeal to justice should be made here, for Dr. Troy is stated, and I dare say truly, to have been, great part of his life, a resident in Ireland. I think he might have stated if the special pleader would have done so, that he was all his life-time in Ireland, and that Dublin was



the chief place of his residence; so that the trial, which we are now discussing in the county of Middlesex, might have been better had in Dublin, and we are here now before a jury of the county of Middlesex, inquiring how much shall be given, by way of compensation for a libel published here indeed, but published also in Ireland, for of that, gentlemen, there can be no doubt, how much, I say, should be given to the titular archbishop of Dublin, for an attack on his character. It is true, indeed, that if he wanted the splendid talents of my learned friend Mr. Erskine, to grace his case, he was under the necessity of laying the *venue* here, for my learned friend does not practise in Dublin; but if the object of Dr. Troy was to have a splendid speech pronounced in honour of his character there was no occasion to come to this side the water for that purpose, for there is, on that side of it, a gentleman equal to any on this, for that purpose, and this my learned friend Mr. Erskine, will not feel to be any disparagement to him; and indeed without disparagement to any man on either side the water, I may venture to say that if a brilliant oration, if powerful and affecting declamation, was the thing wanted, if to pronounce an elegant eulogium on the character of the plaintiff, or encomium on the leaders of the Catholics of Ireland, had been the object, in a word, if to have the aid of as eloquent a speech as can be delivered by man, had been the object of Dr. Troy, there was no occasion to come from Ireland to this country for that purpose, because I know of no man of the present day, who can justly claim pre-eminence in that respect over Mr. Curran, and that learned gentleman practises in Ireland. We have heard of speeches from that learned and most eloquent advocate, illustrative of what I am now speaking to: and here it occurs to me to ask the plaintiff, what reason there is for your coming here, for the purpose of trying this cause, before a Middlesex jury, where you can only be known distantly by reputation, instead of being tried by a jury of the city of Dublin, who are more intimately acquainted with your character, and who must, of course, have a more lively sense of your public and private virtues? Why do you take the trouble of travelling so far for the purpose of being tried by strangers?—This I am the more induced to observe, when I reflect, there is now on the records of this court, a plea\* (that of Mr. Justice Johnson), on which the noble and learned chief justice, before whom I have now the honour of addressing you, delivered the judgment of this Court,—a plea to its jurisdiction. That plea was upon the same species of question as the present; it was a plea to a libel, stated to have been published in the county of Middlesex; and the defendant, being a resident, as the present plaintiff is, in Ireland, pleaded to the jurisdiction of this court;

\* Vide p. 385.

stating that before the Union of the two kingdoms, Ireland had courts of its own, sufficient for the due administration of its justice, and that such courts possessed the same power after the Union, as they did before it; for that part of the United Kingdom called Ireland, still retained its laws, and had judges of its own, sitting as they were wont, in their own courts, and that, therefore, the libel being imputed as a publication by a native of Ireland, ought to have been tried there; and very strenuous arguments were urged in favour of that plea, by my learned friend Mr. Richardson, on the inconvenience to the defendant from having the cause tried at such a distance from his native land; upon the whole of that case the Court delivered its judgment, that the Court had jurisdiction over the case, because the publication of the writing charged to be a libel, was in the county of Middlesex, and was, therefore, not a subject of *indictment* in Ireland. But that is not the case of the publication complained of before you—because the Anti-jacobin Review was as much published in Ireland as in England, as much published in Dublin as in London; and because this is a civil action, and not local; and yet here we are in the county of Middlesex, trying an action for defamation,—a subject peculiarly proper to be judged of by those who know the character and circumstances of the accusing party,—brought by the titular archbishop of Dublin, an entire stranger to us all, as far as regards the evidence in this case, and we can proceed on nothing else. Under such circumstances, you would think it matter of astonishment that the reverend gentleman should prefer a trial in this place; and so it would be if *damages* were the true object of this action, but we shall by-and-by develope this seeming mystery and reveal it; for I do not suppose there is any desire in any party concerned in this action to punish Mr. Symonds, the bookseller, of Pater-noster-row, more than Mr. Wogan, the bookseller in Dublin; and it would, without looking further than this cause, be matter of surprise to any one, that the archbishop of Dublin should look out for a bookseller of Pater-noster-row, to be accountable for attacking his character, when so many of his own countrymen had published the book of which he complains. And the matter becomes still the more unaccountable when we observe how much embarrassed my learned friend Mr. Erskine has been, in his proof, because, as he told you himself, my lord Redesdale could not attend as a witness, which we all know he could not, without neglecting the important duties of his station, nor indeed, without his majesty's permission, first obtained for that purpose, can he leave Ireland, and on which account, the plaintiff withdrew his record on a former occasion. All these are reasons why this action should have been tried before the chief justice of the King's-bench in Ireland, rather than before the chief justice of the King's-



bench in England, and as to the important evidence which has been given this day by the noble earl, he might have given it at his own home instead of coming here so great a distance; but indeed, to say the truth, it was hardly necessary to have examined the noble earl at all on this occasion, because all the proof he has given, I should readily have admitted if applied to for that purpose; for it consists in nothing more than that Dr. Troy the plaintiff in this cause professes the Roman Catholic religion, and exercises the functions of a priest in that mode of worship. That is the whole of the evidence of the noble earl.

We had indeed our attention greatly attracted in an early part of the day by the appearance upon the bench, by the side of my Lord Chief Justice, of a number of noblemen, my lord Castlereagh, my lord Westmoreland, my lord Sidmouth, my lord Camden. These illustrious characters were all introduced, and they had the pleasure of bowing respectfully to my Lord Chief Justice, and after sitting for a while, Mr. Erskine is asked, pray do you wish to examine my lord Camden, if not, his lordship would be glad to be released, his presence being essential elsewhere?—"Oh! no, I do not wish to detain my lord Camden," says my learned friend. Then in a few minutes the same request is made on the part of my lord Sidmouth—whose presence may be wanted at the council—to which my learned friend Mr. Erskine, after seeming to consider whether he can possibly consent to wave the examination of that noble lord as a witness or not, says, as it were on the sudden,—"Oh! no; I do not think I shall have any question to ask of my lord Sidmouth,"—my lord Castlereagh wishes, to know whether he may retire, having much public business of state to attend to?—"No, I shall have no question to ask my lord Castlereagh," says my learned friend;—the earl of Westmoreland requests to know, if it be necessary he should remain in court? "I will not detain my lord Westmoreland," says my learned friend again; in short, gentlemen, these noble lords bowed out of court, with the same elegance and grace as they bowed into it, being brought here for the mere purpose of bowing into, and out of court; they were brought here for the mere purpose of ornament, and not for use. There was, however, a design in all this, although it has turned out to be useless; the object was to make a *show* by the presence of these illustrious persons, and to make a seeming, that but for some unforeseen accident, they might have been examined, and that it was impossible that such characters could have any thing but important testimony to give; O dear! this is all art! for last night, you may depend upon it, all my learned friends held a consultation, and knew as much then as they do now, that the rules of law would not permit them to examine my lord Pingal, touching written correspondence; and my learned friends Mr. Talbot, Mr. Wood, and

Mr. Erskine, knew very well, that not a question was to be put to either of these noble lords; but messengers were nevertheless dispatched to each of their mansions, informing them of the exigency of their summons; "pray, my lord, remember that your lordship should be in the court of King's-bench tomorrow morning at nine o'clock, or you may be too late; my lord Ellenborough sits precisely at nine, I hope your lordship will not fail:" and so these noble persons are brought to make a bow each, at their ingress and egress; but this was not to fail making a figure in the *speech* of my learned friend, although it made none in the *proof*.

As to the examination of the noble earl to the written correspondence, my learned friends knew very well, that lord Ellenborough could never suffer them to put any questions upon that subject, without producing the writing; and now, having discussed all this, which is the mere *phantasmagoria* of the case, the mere shadow of the shade of the question—my learned friend, knowing he could make nothing of what he had, wished to make something of what he had not. He knew that lord Chichester would not be present, and then it became important to lament his absence. If lord Chichester were present, he would give the most important evidence of all in behalf of Dr. Troy, *he* could produce letters of the various ministers of state by which the merit of Dr. Troy would appear, and by which the malignity of the libel would appear also—Oh! that my lord Chichester did but attend! he knew, very well, the noble lord did not, nor do I believe he would have examined him if he were present; but my learned friend, seeing my most esteemed and right honourable friend Mr. Wickham upon the bench, made a seeming appeal to *him* on the subject of the rebellion in Ireland, and of what was uttered by one of the leaders of that desperate enterprise, and particularly Mr. Emmett, but he did not dare to ask Mr. Wickham a single question on the subject of the rebellion in Ireland, neither did he dare to ask any one of the noble lords who appeared upon the bench, a single question as to the effect of the declaration of Dr. Troy, which made so prominent a figure in the speech of my learned friend. He knew very well what he was about, he dared not open their mouths upon the subject of the rebellion, because the moment he did so, they would become subject to my cross-examination, not that I should have examined whether Dr. Troy was a traitor, not that I should have examined whether he, like some others of the Catholics had been found in arms against his majesty's government, after preaching in its favour, but I should have asked some of them, and particularly my right honourable friend Mr. Wickham, some questions which I know would have brought forth something extremely material, with reference to what Mr. Emmett stated; and I also know of many papers



which Mr. Emmett wrote, and I should have taken the liberty of desiring my right honourable and excellent friend on the bench, to whom I have alluded (Mr. Wickham) to state much of what he knows of the late rebellion, during the period he had so considerable a share in the administration in Ireland, and to have asked him whether to his knowledge several things in this supposed libel were not well-founded as to the observations which the author makes, not on Dr. Troy personally—let that be understood—but on the Roman Catholics in Ireland, and the influence they were under. Do not let me be misunderstood; I do not say that at the moment when this exhortation was delivered, the preaching of the doctrine of the priests had the effect of producing the rebellion, or that the doctrine held forth by the noble earl had any such effect; the lord chancellor of Ireland did not think so; but when he was about to confer on that noble earl, the honour of a commission from the authority of his majesty as a magistrate, he took the opportunity of intimating his sentiments to the noble earl on the subject of the Catholics, knowing that he was corresponding with a nobleman of an exalted mind, virtuous life, and finished education, whose tenets of religion did not, nor could he consider as likely to have that woeful effect on society, which those of the lower classes had; and the object of that noble lord was to remove those prejudices, as far as they were, and which he knew them to be, baneful in their effect on society. And I do say that until the Catholic religion shall be entirely and radically altered with regard to some of its prejudices, and be no longer, in that respect, what it is, and until its oaths shall be no longer binding on the consciences of men for the overthrow of other systems, it is impossible to expect but that the effects will be what we too often see them. With this disposition in the majority of the Catholics, it is impossible to prevent, or to be secure from evil, except from the strong hand of power, and which power must always take care to preserve the public peace and to prevent those fatal scenes of blood, which we have beheld too often; and of which, I hope none of us will live to see the recurrence; it is not by the extension of these principles of the Catholic faith that Ireland can be saved.

Gentlemen, it is with a view to this argument that this author introduces his reasoning, and that he talks of Dr. Troy and Dr. Coppinger, and other eminent persons in that profession. Now, be pleased to observe what he says—that the Roman Catholic faith makes it a duty incumbent upon all its votaries to believe in infallibility of council, both in religion and morals; that they are infallible, for that they cannot err. Gentlemen, will you be pleased to attend to this—there is a considerable disadvantage in trying a cause of this kind before such a tribunal as this,—and I mention it without intending, as I am sure

you will readily suppose, to offer the least disrespect to you,—because we are all of us educated under Protestant tuition, and are, therefore, ignorant of many of the points which the Catholic system of religion enjoins; I at least am ready to confess that I am not so deeply versed in all the doctrine of the Catholic faith, as many are who have had a better opportunity of studying them; not having had much time, if I had the inclination, to mix in polemical discussions on religious topics, my parents, and those who superintended my education, being Protestants, and satisfied with that which general education gives upon matters of this nature; and since I have had the means of judging for myself, my life has been rather in a busy scene in this place and others, where the duties of my profession led me. You also, gentlemen, are Protestants, and probably may not have devoted much of your study to the mysteries of the Romish church; there is, therefore, as I am sure it must be obvious to you, a considerable disadvantage in trying this cause before such a tribunal; because a Protestant jury who, however well informed, must have been educated from youth upwards, either under the rites of the church of England, or of the Protestant Dissenting Ministry, and, for that very reason, you cannot be expected to be aware of all the differences between your mode of faith, and that of the Roman Catholic.

Now, gentlemen, however ill I may execute the task, imperfectly I know I shall, yet it is my business to state to you, some of the differences between our mode of faith, and that of the Roman Catholic. This I hope I shall do with some effect, for the purposes of this cause, although, certainly, not for the purpose, nor, I hope, with the effect, of giving uneasiness to one virtuous or worthy Catholic; for I here most solemnly protest against any such intention, and declare, it is farthest from my purpose; but my duty to my client demands that I shall lay before you some of the points of the Catholic faith, without a knowledge of which, it is absolutely impossible to do justice to this cause, because impossible to judge of the reasoning in the publication now before you.

The first thing to be taken notice of in the Catholic faith is, Confession, which is a fundamental article in the Roman Catholic religion; so fundamental, that, to abstain from, or even to omit it, is a mortal sin, incurring deep damnation; and so rigid are they in this, that, according to one of their catechisms, published among themselves, we are made to begin confession before we have any thing to confess; for why should we begin to confess, before the mind is capable of abusing its volition? I was astonished when I heard it, and I am not ashamed to confess my ignorance, nor to admit, that if the indulgence of my lord had not been extended to the parties who were not prepared, when this cause stood formerly for trial, by allowing it to stand over,



my client would have lost the benefit of what I am now about to state to you. The cause, however, stood over, at the request of the plaintiff, who was not ready, on account of the absence of lord Fingal; the plaintiff, therefore, was allowed to withdraw his record, which is an indulgence after the cause is called on. I am, however, by that event, better prepared for this defence than I was at that moment; for lately, at my residence by the sea-side, I read some books which I took with me, and of which, as a member of the Church of England, I own I was ignorant; they certainly were new to me—I am so far glad of the circumstance.

Gentlemen—When do you think Roman Catholics begin to confess? I mean, at what age does confession become a duty, and abstinence from it a deadly sin? Would you suppose that they began to confess earlier than they began to sin, that is, when we suffer our will to be abused by doing acts which the will condemns? Would you suppose, that at an age when the mind is hardly capable of forming an opinion, or being led to any thing like a distinction between good and evil, the season of confession by the Roman Catholic faith commences? and yet the fact is so; for confession is enjoined to commence at the age of SEVEN years! Nor is this all; it might be said to be a ceremony without a meaning, until the mind is capable of discerning its use; but the Catholic religion enjoins it as a duty to come to confession, and declares the omission of it to be a mortal sin; that is, the Catholic religion pronounces it to be a mortal sin not to confess sins, before we are capable of sinning. Do I say too much when I say this? What is the age at which confession begins? The age of seven years. An age at which that judgment which God gave us to guide and direct us, under the aid of revelation, through this transitory life, does not begin to operate, and yet this is the age at which one human creature is to begin to confess his sins to another, for the purposes of obtaining absolution. Such is the doctrine of which this defendant proposes to question the Divinity or wisdom. Now, that I may not be taken to be slandering the Catholic religion, or to misrepresent its tenets, the Catholic Catechism shall explain the case: “What sort of a confession is this to be? Why, it is to be a *pure* confession, an *entire* confession. You must humble yourself by a confession of all the sins you have committed since the last confession.” All this must be done at the age of seven years; for what purpose? In order that the priest may give you absolution! What is the consequence if you do not thus confess? That you will incur damnation! Why? Because you have endeavoured to deceive Omniscience, and for which you are told you shall be doomed to eternal damnation! And all this horror assails your mind—if it were possible that horror could assail the mind at the early age of seven years—for what offence? For not making

confession of your sins to the holy priest, anointed by his holiness the pope, the vicerent of Christ upon earth, which is a mortal sin, and subject to eternal damnation! What are you to do besides? To amend your life by hearty sorrow for your sins; but you are not to imagine that when you have done this, your impurity is taken off; but if you do go to this confession, without the mind being pure, and you confess all your sins before God and your confessor, you had better stay away, for this impurity also is damnation! But are you to confess once only for your sins, and then to obtain your absolution? No! you must confess often, as man is frail and liable to sin often; and this you must do, because confession brings a man before God; leads him to a good train of thinking, and the mind brings itself back again to the sins of the world. And therefore nothing leads a man to the discharge of his duty better than frequent confession. Besides, after this you are to receive the holy Sacrament, a ceremony infinitely more august, if I may use such an expression, than confession can be; but this also in a manner very different from that which is observed by us under the reformed religion. All these ceremonies you are to observe, and to observe often, which you commence at this early age, nor are you allowed ever to discontinue them; and what is the penalty if you omit any of these duties, as they are here laid down and enjoined? Eternal damnation! You are, therefore, bound under this dreadful denunciation to begin confessing at the early age of seven years; you are to continue to confess, and you are to confess often. The priest hears the confession. What is the result of this early, this continual, and this repeated confession? Why, that the priest knows what sins you have ever committed, and what you intend to commit; for confession is not confined to acts which have been committed, but such as you intend to commit; for you are to confess *all* your sins, which consist as much in *intention* as in *acts*; and under this sanction, you are not only bound to make confession under the dreadful anathema of eternal perdition, but you are also invited to make it under the hope of absolution. Thus it is, that Roman Catholic priests become acquainted with all the deeds of those who believe in the purity of that faith, and of all their intentions, of every thing by which their minds are occupied. What then? Why then arises a dreadful rebellion in Ireland, on the sudden, as it appeared to us, but on the sudden it could not be, for it was the result of long preparation. I do not mean to say, that the late rebellion in Ireland was purely and solely the work of Roman Catholics, there were many among the rebels who were not Catholics; but no one will accuse me of harshness, or want of charity, when I say there certainly were a vast number of Catholics concerned in that rebellion; that is a proposition which the noble earl himself will admit; neither will it



be said that no priest of the Roman Catholic church was found in arms in that rebellion, after having exhorted his flock, in public, to obedience to the law, saying that all power is of God; and that those who resist power, resist the will of God. Those who doubt this, if any such there be, may be converted, upon perusing some accounts of trials upon courts-martial.

Gentlemen, I was lately considering how I might the most readily find historical information respecting the conduct of the Roman Catholic clergy, as it referred to the affairs of this life; I contemplated this subject as I travelled in a carriage, when I happened to have by me, and at my hand, Mr. Plowden's book. I knew Mr. Plowden, as I dare say you do, to be a man of method; it occurred to me I was likely to find something useful to my purpose under the title "*Priest*." I looked at the index, turned to the page under the title of *Priest*, which is in page 716, I found at once a definition of that character as applicable to the Roman Catholic clergy, as easily to understand as any common-place topic in a book of practice in our profession; such as an action on the case for goods sold and delivered; plea *non assumpsit*. Thus:—"Priests. Some of the Roman Catholic priests always must be found in a rebellion." And if you want to know his argument for it, you have it thus:—"The almost total dependance of the Romish clergy of Ireland upon their people for the means of subsistence, is the cause, according to my best judgment, why, upon every popular commotion, many priests of that communion have been, and until measures of better policy are adopted, always will be found in the ranks of sedition, and opposition to the established government. The peasant will love a revolution, because he feels the weight of poverty, and has not often the sense to perceive that a change of masters may render it heavier; the priest must follow the impulse of the popular wave, or be left on the beach to perish."\*—Therefore he makes out the place in which a Roman Catholic priest is to be found in time of rebellion. So in the late insurrection in Ireland, we found them there; we are then sure to find in a rebellion, among the Roman Catholics, a sprinkling of priests. I consulted another part of the same book, where I found—"There is no one man found out among the Catholics in arms, who was not a desperate reprobate all his life." Why then we have got the length of this—that there *may* be a rebellion in Ireland in which the Roman Catholics are a part, to which may be added, "aided and abetted by their priests;" that an insurrection *may* break out in Dublin, composed principally of persons of the Roman Catholic persuasion; that the

most vigilant government is not always able to foresee, nor the most vigorous, on the instant, to repel, such insurrections or rebellions.

Now what are the arguments of the author of the pamphlet before you? He says, that lord Fingal uses the fact of the exhortation by Dr. Troy as a proof of the loyalty of the Catholics of Ireland. If lord Fingal had taken this course of argument, "That the exhortation, if it had been delivered before the insurrection, would have had the effect of preventing it, or had said, that the exhortation itself was a proof that Dr. Troy wished it to be prevented;" if his lordship had given instances in which the doctor had exhorted his flock to abstain from rebellion, to keep clear of those violences which produced it before it happened, the author of the article now before you, would have past over the passage in his lordship's correspondence, for then we should not have heard of the inhuman murder of the revered lord chief justice of Ireland. If the reverend Dr. Troy had endeavoured to reduce those turbulent and desperate insurgents to obedience to the laws, and subordination to the government of their country, this author would have been without excuse for what he said: but when my lord Fingal made use of this exhortation, after the fact, as a proof of the loyalty of the Roman Catholics; this defendant ventured to dispute the conclusiveness of that reasoning, and so, most humbly, without intention to offend the noble earl, do I.

On the 23rd of July, 1803, the insurrection broke out in Dublin, and that venerable magistrate, as he was returning from his country seat, was met by a gang of assassins, dragged out of his carriage with his daughter, or some near relation, and his nephew Mr. Wolfe, this venerable judge, I say, is thus inhumanly dragged away from his relations, and in cold blood he is piked in the open street in Dublin; and the archbishop of Dublin puts to the press an exhortation to the Catholics, and eighty copies are taken off and delivered to his inferior clergy, to be by them read to their flock, dissuading them from rebellion, from warfare and from bloodshed, as we have heard it read. If you tell me that Dr. Troy is a loyal and an eloquent man; that he speaks, and that he writes well; be it so—that he wrote well on the subject of insurrection; be it so—that his views and objects were to quell the rebellion, or the insurrection; be it so—but if you tell me that the whole body of the Catholics were virtuously inclined, and that none of them wished, at any time, any thing hostile to the interests of Great Britain, and never wished to bring in foreign aid to any scheme of rebellion, because Dr. Troy prepared this exhortation; that I deny, I say that such a conclusion does not follow from your premises. I say that the exhortation came too late for the best of purposes, and I cannot help lamenting it did not come sooner—I say that one gentle

\* These are not the words of Mr. Plowden, but of Dr. Stock, bishop of Killalla, in his interesting "*Narrative*," p. 91, 5th edit. and which were quoted by Mr. Plowden.



hint from Dr. Troy—a gentle hint to government before the fact, would have been better than all the exhortations that could issue after it. The evil was past and irreparable, before the exhortation came. No human power could then call that venerable man back from his grave, or do away the memory of those horrid scenes which stained with blood the streets of Dublin.

What is the argument of this defendant, upon this occasion? It may be illustrated by an example:—suppose my learned friend and myself, being on a footing of friendship and intimacy, and that others had frequently observed it, and had taken notice that no two brothers were ever more partial to the company of each other; that the friendship was such, as that neither prosperity nor misfortune could affect it: and let us suppose that my learned friend had been in the constant habit of imparting to me, and I to him, every thing that required the greatest confidence; and let us suppose that my learned friend had gone out one morning and was killed in a duel—Would not any body who knew us both, naturally say, on hearing of such an alarming event, “Mr. Garrow should have prevented this, he must have known of it—I knew that he and Mr. Erskine were, and had been for many years in habits of such intimacy and confidential intercourse, that I am convinced the thing could not have happened without a previous intimation given of it. Mr. Garrow, one of these two persons, could not possibly be engaged in any thing remarkable or extraordinary, without the previous knowledge of the other.”—Would you not add to your lamentation for the death of my learned friend, by saying, you “were surprised that such an accident had befallen him?” Would you not say, “I thought Mr. Erskine, although I knew he abounded in courage, had yet a mind too well regulated to fall a victim to a foolish rage; and that whatever silly notions, very silly persons might entertain upon that subject, he would rather have applied to my lord chief justice for his authority to preserve the peace, for there was no act, however terrible, in which one of them did not inform the other,” and would you not add, that “Mr. Garrow would have done every thing in his power to have prevented the mischief: that Mr. Garrow had so many years shared in the prosperity and happiness of his learned friend, and had made a bad use of his powers of persuasion, in not advising him to desist from that fatal duel.” Now what does the author of this pamphlet do on this occasion? Does he say that Dr. Troy knew there had been popish conspiracies in Dublin prior to the 23rd of July? He says no such thing. He says that Dr. Troy knew that which the members of the government knew; and however slender the force they had, they did take all the care and precaution, which as good subjects they ought to have done, although the insurrection did afterwards break out. Does the author of

this article say that Dr. Troy knew that the rebels were coming from Wexford, and from Carlow to Dublin; and that the firing of a rocket was the signal agreed to be given before, or of the explosion of a field-piece for the commencement of this horrid scene? Does the author of this pamphlet say, that Dr. Troy knew that these leaders of the insurrections were acquainted with Emmet, and those to whom my learned friend alluded? No, he does not; but he says, that from the confessions which the Catholics make, he puts it argumentatively, that he must have known it, which is not alleging a fact, but deducing an inference from preceding facts. He argues from the obedience which the Catholics engage to pay most implicitly to the bishops acting under the authority of the see of Rome—and also from the manner in which the bishop himself takes an oath to be obedient to the see of Rome, and to punish heretics, and so on; and he argues, that this is the best system that ever was instituted since the world began, for the purpose of concealing all evil intentions towards a government that is not Catholic; that it is the most dangerous to any government, that is not itself Catholic, that the wit of man ever yet contrived; and most effective to defeat seditious practices or treasonable intentions where the government itself is Catholic. This religion enjoins confession at an early age—under it, confessions are made at an early age, and they are continued, and repeatedly made. Did the Catholics of Ireland make confession to their priests, as all other Catholics have been in the constant and uniform habit of making confession to their priests? Has this defendant done more than make deductions from the probability of such events? Does this religion enjoin confession?—Yes. Did the Roman Catholics of Ireland make such confessions?—It is not denied. What could they confess, but what they were guilty of? Did they confess, that for weeks and for months together, they were engaged in preparing arms for the express purpose of using them in rebellion against their sovereign, and the government under which they lived? Had they not a depot for such arms, contrived with a degree of secrecy, which compleatly eluded the search of all the officers of justice, employed for the purpose of endeavouring to discover them? Did they not frequently go through all the gravity of a funeral, and pretend to bury the dead, and read the funeral service, with all possible solemnity on the burial of the dead, while they deposited in the grave, coffins filled with pikes, ready to be taken up again as occasion should offer? Were there not generals appointed ready to take the field, on the landing of a foreign foe? Did government know any thing of these matters?—No, it did not. Who possessed this knowledge?—Those who were engaged in the plot. Who were they?—A great number of them, at least, were Roman Catholics. To whom did they confess?—To



their priests. Did you, Dr. Troy, give to government, any thing like a hint of any part of these horrid preparations, and which broke out afterwards in corresponding acts?—No, you did not. What says the author of this pamphlet?—This—As the Roman Catholic religion enjoins confession of men, women, and children, from the age of seven years upwards; an insurrection threatens the city of Dublin, with immediate destruction, by seizing and destroying his majesty's government, root and branch; as this had been gathering for a considerable time before; as you Roman Catholics have been in the constant uniform practice of confessing all your sins—What then?—Why the author of this pamphlet does not say to the priests—You did know that all this was intended to have been done; for that would be taking upon him, to aver a fact, beyond his power to prove; but he states, that which appears to him to be a reasonable deduction; he says, you must have known it. He, therefore, does not say Dr. Troy had knowledge of all these matters before they happened, by knowing the intention of the parties engaged to commit them, and who afterwards did commit them; but he says, that from all these circumstances, Dr. Troy must have knowledge of these things.

I may perhaps, be told, that whatever Dr. Troy knew upon this subject, yet he could not communicate any part of that knowledge to government, for that the same doctrine, which enjoins the sinner to confess his sins, enjoins also, that the priest, to whom the confession is made, should keep the confession a profound secret, and that, therefore, the doctor did all he could do, when he poured forth among his flock, an exhortation to their repentance.

Gentlemen, I have heard this doctrine now and then stated; but if it be a principle of action with the Roman Catholic priests, it is most alarming, because it comes to this, that an immense number of his majesty's subjects, are put into a situation in which their intentions, however mischievous, however subversive of the state, can never be made known, until the mischief be completed. The Roman Catholics are told it is their duty to confess, and they do confess, not only that they have committed some atrocious acts, but that they are going to commit others still more atrocious; to commit murder; to massacre whole multitudes in cold blood; to lay waste their country by fire and sword; to invite a foreign foe into, and then surrender their country to a foreign yoke; and all this must remain an impenetrable secret to the government who may have power to prevent it, if a timely disclosure takes place, because the Catholic faith enjoins, that the priest, who has the means of disclosure, is bound to preserve the secret inviolate. Am I to be told, that insurrections and rebellions are to be submitted to, because the priests are bound by the rules of their faith, not to disclose what comes to their

knowledge, by confession?—I hope not. I know this, that the Roman Catholics, in some of their doctrines, believe in the infallibility of council, in matters of faith, and in matters of morality; that to omit to confess, is a mortal sin, and punished by eternal damnation!—that to refuse or omit to make disclosure at confession, of any one thing, is subject to the like penalty; and, I understand, it is the doctrine of the Roman Catholic church, that if any intention of rebellion be disclosed, to dethrone a Roman Catholic prince, the priests are at liberty, by the tenets of their religion, to disclose such intention; but, if intended to dethrone king George the third, it is not the understood duty of the Roman Catholic priest, to make any such disclosure, which appears by some of the writings of their priests, so late as the year 1802; they say they are not bound by their oaths in that respect, while he is, what thank God he is, a Protestant, and what they call an heretic. But I say, it is the duty of all persons, whether Catholics or Protestants, to disclose and make known every thing that has for its object, the overthrow of the government under which we live, otherwise any plan might be concerted, and carried into execution, for overturning the government of this country, and establishing instead of it, the empire of France: nothing is wanting, but that the plot should be confined to Roman Catholics, and they may, to any number, be engaged in it; so do we see that Catholics can always readily join in rebellion against a Protestant prince, or to overturn a Protestant government. There was a rebellion in Ireland in the year 1798, and the Catholics joined in it, and the priests defend themselves on all these occasions of misprision of treason by the doctrine of their faith, for that they are not bound to disclose any thing they know. What the condition of the Roman Catholic priests is, I take from an eloquent person who delivered his sentiments upon this subject, on the occasion of an important discussion in another place, whose speech I had the edification and the pleasure to hear, which speech has since been accurately given to the public, to whom it is a treasure, for no man is more able or learned than its author; I speak of Dr. Duigenan; a speech which was not contradicted by one of the greatest orators of the age (Mr. Grattan), who took his seat for the very purpose of opposing that honourable and learned member, upon that very subject. Dr. Duigenan then exhibited a faithful picture of the Roman Catholic religion, wherein he observed, among many other most interesting topics, that if a Roman Catholic is excommunicated by his priest, he cannot have so much as a drop of water, though he be famishing. Under that excommunication of his priest, if he be dying in a ditch, he can neither have a drop of water from the puddle, nor a crust of bread, nor a morsel of food, neither can he have any help whatever from any Roman Catholic; there he



must perish, to the utter shock and horror of common humanity; so that a Roman Catholic excommunication is an utter deprivation of every thing on this side the grave; and not only an utter extinction of all hope beyond it, but a certainty of perdition hereafter, according to the true faith of a Roman Catholic; and the bare omission to confess to the priest, will draw down this anathema upon any Roman Catholic. Thus by working on the hopes of their flock, on the one hand, by absolution, and on their fears, by threats of eternal damnation on the other, do the priests become acquainted with all the Roman Catholics have done, are doing, and intend to do; so that they know when any rebellion is intended, or any design harboured, against the safety of the state, and this is what the author of this pamphlet has stated, and it is done in language so fitting to the subject, that I cannot do better than repeat it to you:—

“It is laid down as a fundamental principle of the Roman Catholic religion, by many general councils, particularly the fourth council of Lateran, A. D. 1215, and that of Constance, that an oath of allegiance cannot bind one of its sectaries to a Protestant state, and this principle has been frequently carried into practice during seven centuries. Dr. Troy, titular archbishop of Dublin, and Mr. Francis Plowden of the Temple, have declared, the former in his pastoral letter published in the year 1793, and the latter in a work entitled *The Case Stated*, ‘that the decrees of a general council in matters of faith and morality, when approved of by the pope, and received by the church, are absolutely infallible, and not liable to deceit or error.’ Under the sanction of these councils, the pope has frequently declared the subjects of an entire kingdom absolved from their oaths of allegiance; and many sovereign princes have lost their lives, or their thrones, or both, in consequence of such denunciations. Of the various bulls fulminated against English monarchs, for the above purpose, I shall mention only that of Pius V, in which he called upon them to rise in arms against queen Elizabeth, and to depose her, for that, being a heretic, their oaths of allegiance to her were null and void. In his epistle addressed to the earls of Northumberland and Westmoreland, after they had risen in arms against her, to which they were incited by that bull, this pontiff exhorts them, ‘in the Lord stoutly to persevere in the laudable work of rebellion, not doubting but God would grant them assistance; and that if they should chance to die, in asserting the Catholic faith, and the authority of the see of Rome, it were much better for them, with the advantage of a glorious death, to purchase eternal life, than by ignominiously living with the loss of their souls, shamefully to obey an ungovernable woman.’

“During the dreadful rebellion which broke out in Ireland, in 1641, the Irish papists were declared, by the bull of pope Urban 8th, to

be absolved from their oath of allegiance, and were encouraged to persevere in the pious work of extirpating heretics; and Rinuncini, his nuncio in Ireland, denounced the terrors of excommunication against any persons who should adhere to their oaths. For some time previous to the dreadful rebellion of 1798, and until the eve of its explosion, the Irish priests and their flocks, solicited the magistrates to tender oaths of allegiance to them, and in many cases to increase its sanctity and solemnity at the foot of their respective altars; and yet those very priests, and their congregations, were furious and sanguinary, as soon as the rebellion broke out. Not only the vulgar herd of papists, but many gentlemen of education made no scruple of violating their oaths on that occasion. Dr. Burke, titular bishop of Ossory, in a work entitled *Hibernia Dominicana*, and published in the year 1772, in Ireland, declared in direct terms, that an oath of allegiance to George 3rd is null and void, ‘as long as he professes an heterodox religion, or has a wife of that religion;’ and to sanction his opinion, he tells us, in the same work, that the pope’s legate, Ghillini, pronounced such an oath to be null and void; and that the Irish could not renounce that tenet, ‘that they were bound to depose and murder heretical sovereigns.’

“He further tells us, that these doctrines were communicated by the legate to the four titular archbishops of Ireland, as a rule of faith, in four circular letters, which Dr. Burke in his *Hibernia Dominicana*, says are ‘*literæ vere aureæ cedroque dignæ*.’

“Though the secretaries of the Roman pontiff take, and violate with indifference an oath of allegiance, they will not venture to take the oath of supremacy, for reasons which I shall assign, and, therefore, they are excluded, and very properly, from enjoying the full benefit of our constitution.

“The papal supremacy is a fundamental article of the Romish church, and to renounce it, is regarded as a mortal sin, and an act of such gross impiety, that the person guilty of it, cannot get absolution but from the pope himself, and to him he must pay dearly for it.

“The case of the late lord Dunbayne affords a striking instance of this. He was titular bishop of Cloyne, and, unexpectedly, getting a title, and a fortune, by descent, he renounced the errors of popery, and was, for many years, apparently, a rigid Protestant.

“But it appeared afterwards, that his conversion was not sincere; for finding his dissolution approaching, he resolved to return to the Romish faith, without which he thought, that he could not obtain salvation. But Dr. Troy, titular archbishop of Dublin, informed him, that he could not receive him into the bosom of the church, without first applying to his holiness the pope; and this besotted bigot was so much alarmed at last, that in order to propitiate him, he left an estate of 1,000*l.* or 1,200*l.* a year to the col-



lege of Maynooth, though he had some near relations in a state of indigence. His lordship's heir at law instituted a suit for recovering this estate, and, having filed a bill in the court of Chancery, in the year 1800, to which he made father Gahan, the priest who administered the sacrament to him, a party, he refused to answer it; and again he refused to give evidence on the same point, on a trial by jury, in the year 1803.

"In the course of this suit, a popish barrister pleaded as an excuse for the priest's silence, that it was contrary to the rules of his church to answer; and he insisted on an exemption from the jurisdiction of our courts for its members; which should alarm the government, and convince them of the danger of allowing a popish hierarchy to be erected in the bosom of a Protestant state; and yet it is said this measure is at this time in the contemplation of the British cabinet. Can it be as a reward for their loyalty?"

Now, gentlemen, let us see how this matter stands. It is here stated, that Dr. Troy must have known all the circumstances that preceded the 23rd July, 1803. Why? Because his flock were true to the principles of their religion. What then? Because his flock confessed, and were bound to confess, does it follow that he is bound to disclose all he knew? They say he is not. What does this author say? Is not this the argument?—That Dr. Troy, the titular archbishop of Dublin, resident in Dublin, in which there is a conspiracy, by signal to rise into an insurrection, must have known this, that it must have been known to Dr. Troy, by the confessions of so many of the Catholics concerned in it? I really think this point so clearly made out, that if I were any where but in this place, I should not be justified in speaking two minutes upon it; but the manner in which this confession is introduced, is extremely interesting; for the Roman Catholic priest tells his follower in the faith—"There is nothing you deceive yourself so much in, if you suppose that the Averages had at Easter will do, it is proper you should come often, with an humble spirit and contrite heart, to ask forgiveness of your God; above all, you must not commit that mortal sin, never to be pardoned, of endeavouring to deceive God, which you do, when you endeavour to deceive his minister, to whom you are making confession." Now, gentlemen, consider the condition of the Irish rebels; it differs much from that of a man who has committed robbery or murder—the one is haunted by his own guilt, is afraid of his own shadow—the other is encouraged by numbers to proceed, and his confession gives him ease, and hopes of absolution; and the time most likely for the Roman Catholic priests to be well acquainted with the disposition of their flock is the season when conspiracies are carried on preparatory to rebellion, because it is a single act to be accomplished by many, and therefore the

time when the Roman Catholic priests of Ireland are best informed of the views and objects of their flock is on the eve of an insurrection or rebellion, and that is the argument of the author of this letter. The author then proceeds to make some commentaries on the letters of my lord Fingal, and the exhortation of Dr. Troy. He admits, that the exhortation is good; but he observes, that it is a publication after the insurrection had taken place in Dublin, and he takes the liberty of asking the question Does this go to prove the loyalty of the great body of the Roman Catholics of Ireland? and he says, as I say, that it is quite the contrary. Now, what argument arises out of the exhortation?—The fact it is called to prove, arises out of the loyalty of the Roman Catholics of Ireland. Now, Dr. Troy himself shall be my witness. He sets about in his exhortation to deplore the proceedings of the preceding night. Now, all people, but "his dear Christians," as he calls them, admit the want of loyalty in a great body of the Catholics; he tells them the effect of sedition and insurrection; he exhorts them to return to peace and good order; he tells them that resistance to power is a vice, and he speaks with natural horror of the preceding day; and he advises them not to be deluded by the pretended benignity of France, who had more freedom when they boasted of it less. These are the arguments by which the loyalty of the Irish Catholics is supported. He sets about to correct them, by this exhortation of his on their want of loyalty; and yet, somebody, who did not deal fairly by my lord Fingal (for it cannot have been done by my lord Fingal himself), somebody who must have stolen those letters, published them, with interpretations of his own, by which this exhortation, accusing the Roman Catholics of Ireland with rebellion, is given as a proof of their loyalty. Thus their loyalty is attempted to be proved by a document which records their want of it.

But it may be urged that Dr. Troy, whatever knowledge he might have of the intention of the Roman Catholics, yet could not divulge it, consistently with his own oath as a priest, that the authority of the religion he professes would be done away if he disclosed it, and that there will be no more confession if that should be done. Now if A. B. confessed to me that he was going to commit murder on a particular individual, whom he should name, and that he were to come to me the following day, to tell he had committed it; am I to be told there will be an end of auricular confession, if I were to take weapons for preventing such a crime, and that I am bound, by my oath, to permit such an act to be committed although I have the means of preventing it? Let us understand the extent to which this principle goes, that we may know what it is we have to trust to, for although I should be extremely sorry to have



any shade cast upon that toleration of religious opinions, persuasions, and professions, of whatever nature or denomination, which is so worthy our esteem, yet I do hold it to be essential to our existence, to take care that nothing be even tolerated that is absolutely inconsistent with the safety of the state; but that radically and fundamentally abhorred, diabolical, and damnable position that they are not to keep faith with his majesty, because they choose to denominate him a *heretic*, must be renounced for ever; for I say they like all other men, who are protected by the state, owe to the state allegiance, and that they whoever they are, must on all occasions abstain from acts that tend to the common ruin. If I am asked how this is to be done, I can only say that nothing should be done, or even tolerated, that is inconsistent with the safety of the state, and that we take care of the common security, for I am persuaded there is not one man within hearing of my voice, who will not allow that prejudices which endanger the state should not be allowed as motives to be acted upon. Nor can I conceive there would have been any impropriety in any Roman Catholic priest having given a hint to government before the 23rd of July, to have doubled the guard; the Castle would have received the hint with kindness, and the Castle is never difficult of access; I should think that a very useful communication upon such occasions might be made by Roman Catholic priests as well as by any other persons, without any infringement of any oath; and this I know too, that the oath against misprision of treason ought to be impressed on the mind of every man in his majesty's dominions, which is, "that I do solemnly swear that I will disclose and make known to his majesty and his successors, all treasons, and traitorous conspiracies which I shall know to be against him or any of them, so help me God." This oath every Roman Catholic ought to consider as binding upon him, as any oath he can take to be faithful to his holiness the pope.

The substance then of my client's defence is this, that in the publication of the correspondence between my lord Fingal and my lord Redesdale, it was alleged that the exhortation of Dr. Troy, the plaintiff in this cause, was a proof of the loyalty of the Roman Catholics in Ireland; this my client has ventured to deny, and although I am ready to acknowledge the great talents of the noble earl, in whose name that is alleged in the correspondence,—talents I admit to be greatly superior to mine,—but yet with all that inferiority of talent, I should not be afraid of meeting his lordship, and to contend that the exhortation by which the Roman Catholics are charged with rebellion, does not prove them to be loyal. The other point is, that the plaintiff must have known of the intention of a great number of the Roman Catholics to revolt, long before the thing happened, as is indeed manifest by what was said by Mr. Em-

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mett, and that therefore the plaintiff ought to have communicated that, in some way or other, to government, by which the whole of that horrid scene might have been avoided perhaps altogether, at all events greatly mitigated. The object upon this occasion has been to defend my client against the charge of being a malignant libeller of Dr. Troy.—Did he ever see Dr. Troy since he was in Ireland?—No, he did not. Did he ever hear of Dr. Troy, except from my lord Fingal's letter? Did he ever write any thing about him, even in this pamphlet, charged to be such an atrocious libel upon Dr. Troy, except in these five lines: "Dr. Troy must have known all the circumstances which preceded the insurrection in Dublin, on the 23rd of July, 1803, and yet he did not put government on their guard. The present administration are convinced of his treachery on that occasion, and yet, for many years past he had been treated at the Castle with the utmost respect, and had even received favours for some persons of his own family"? But the truth is, as I took the liberty of stating in an early part of my address to you, this subject was not brought forward with the primary view of damages to Dr. Troy, but was brought forward in this shape, to prepare the way for a more public discussion of the question of the Catholic claims which has recently been discussed in parliament; and I agree with my learned friend Mr. Erskine, it was discussed with a moderation and temper which did the two branches of the legislature honour. I submit to you, therefore, gentlemen, on the whole of this case, that the defendant published this book in the true spirit of argument; and if so, he cannot be called a libeller, and you cannot find your verdict against him.

I have but one topic more to add: my learned friend, Mr. Erskine, considered this not only a libel on Dr. Troy, but also a libel on the whole body of the Catholics of Ireland; I am sure you recollect that expression of my learned friend's, and he alluded to Mr. Emmett's declaration. Gentlemen, you do not sit here to punish my client for a libel on the whole body of the Catholics of Ireland, although as I have said already, this case was not brought here to vindicate the character of Dr. Troy—here Dr. Troy need not be compensated, for, here he has not been traduced, but the cause was brought here in July last, and was intended to prepare the way for another discussion, and that in parliament.

Mr. *Erskine*.—Do you give any of the facts you have stated in evidence?

Mr. *Garrow*.—You know very well I shall not, I only alluded to them as matter of history.

## SUMMING UP.

Lord *Ellenborough*.—Gentlemen of the Jury; This is an action by John Thomas Troy, titular archbishop of Dublin, which he brings for reparation to an injury which he states he



has received by the publication of a book entitled the *Anti-Jacobin Review*, representing that he was acquainted with the circumstances which preceded that dreadful outrage in Ireland, which took place on the 23rd of July, 1803, when lord Kilwarden was destroyed, and that he did not put government on its guard by a timely disclosure of that fact, and that his concealment was of such a nature that government was convinced of his treachery on that occasion. The libel is stated to be published here, and he has brought this action for the purpose of deciding whether the libel has been so published, and what reparation he is entitled to.

Gentlemen, I cannot find fault with Dr. Troy for bringing his action here. The publication of which he complains took place here, and the propriety of his coming here cannot, I think, be doubted, because in a country recently agitated by dispute and even rebellion, where "wounds of deadly hate have pierced so deep," where one party are of the Protestant, the other of the Roman Catholic persuasion, we could not expect so impartial a trial as here, where no recollection of lost friends, or other passions which agitate men's minds and affect their feelings as they do in Ireland, can have any influence. The plaintiff has, therefore, brought his action here, and I think he has done well; he has brought it for damages for a libel, not to subject the party to punishment by criminal proceeding, but to make reparation as for a civil injury, in which he has given the party an opportunity of justifying and making out the truth of the charge, if it be true; for in a civil action the truth of the charge is a defence, which is not the case in an indictment for a libel, therefore I do think that both with respect to the place where, and the mode whereby he submits his case for consideration, he has acted fairly. In the first place he is sure to have it tried with purity, by purity I mean exemption from prejudice, for no doubt there is purity in the administration of justice in Ireland as well as in this country; when I say purity, I speak with reference to the absence of local prejudice.

Having brought his action here, and the defendant not having justified the truth of the paper complained of by Dr. Troy, it is to be considered as a libel not to be justified; whether under all the circumstances it is to be considered as slanderous or not, is for your consideration.

Gentlemen, it is certainly very true, as was contended with great force and effect by the learned gentleman who is of counsel for the defendant, that the purpose for which it is published is extremely material—whether the purpose be to calumniate Dr. Troy, or only the discussion of the conduct of the Roman Catholics with reference to the Protestant government? the discussion, if carried on with moderation, on the subject of government, is very allowable, and the fair scope of

that discussion is a sort of polemical controversy between two noblemen whose names are mentioned, the one a noble earl and the other a noble lord and chancellor of Ireland; but if in the course of what has been published the defendant has unfortunately tript, and stated that which is injurious to the plaintiff, he certainly is responsible to him in this action. If so, then, the question would be, considering all the circumstances of the case, what would be fair and temperate damages; I say fair and temperate, for one would wish to be temperate and moderate, if it appears that he has only tript upon an improper expression, and said of Dr. Troy that which he ought not to have said; still if in what he said there should appear to be no evil design, or perhaps it be meritorious, yet the person to whom the publication is injurious, has a right to ask for redress. The publication has been proved, and the whole of it has been read to you, in order that the whole of the context might be explained; I will state the material part to you, which from the nature of the evidence is necessarily reduced to a few lines. The defendant says, in this publication, that Dr. Troy must have known all the circumstances which preceded the insurrection which took place in Dublin on the 23rd of July, 1803, and that he did not inform government.

"Must have known," without imputing any criminal motive for his conduct, I should have thought the action not maintainable, because it appears to me only equivalent to "might have known," which is nothing criminal, because I might have known as well as he. Does he mean to impute to the plaintiff that he conducted himself like a good subject, or that he was guilty of criminal negligence towards his country? That he must have known all the circumstances previous to the insurrection might mean, "practically innocent;" if he meant that the plaintiff did not know the circumstances, he could not put government on its guard. The question here is, whether he did not take upon himself, in terms, to aver that he did know—then come the words, "For the present administration are convinced of his treachery"—On that occasion his conduct was such, that it worked on government a persuasion of his treachery—It is for you to say, whether you understand this as imputing to the plaintiff that he had foreseen this insurrection, namely, that he had an actual knowledge preceding the rebellion, of circumstances which indicated that a rebellion was to take place, and that he withheld from government, treacherously, the information.

I do not think it is to the purpose to ascertain whether there was blame or even merit in the general motive, if there was an object to impute treachery to the plaintiff; for I do not decide on the general motive. If you are of opinion that the defendant meant to impute to the plaintiff actual knowledge and ac-



tual concealment, and an actually treacherous purpose, the defendant will come within the scourge of the law, by doing that which he is unauthorized to do, with the character of Dr. Troy; and the only question will be, the quantum of damages which Dr. Troy has a right to receive at the hands of the defendant. I have no doubt that the object of Dr. Troy is the purgation of his character, and to do away the foul stigma of suspicion; and while he was obnoxious to that suspicion, I own, I think that Dr. Troy has done commendably in bringing this action. With a view of giving the defendant an opportunity to come forwards to verify the fact, he has brought this civil action. Nobody has come forward to verify the fact, he knew the danger certainly, and no event of this day has furnished any proof, before us, injurious to Dr. Troy; he stands completely exculpated; but it is for you to say what reparation should follow. It does not appear in evidence that this publication was

in Ireland, but here. I can hardly give any line to guide you. If the proceeding were criminal, there are many points that would go to mitigate the sentence of the judges.

To the extent you think this gentleman has been injured, you will make a moderate compensation; you will give such an amount in damages as may be necessary to vindicate the honour of this gentleman, as any one of you would wish to go out of court with if attacked; farther than that which may be sufficient to prevent any farther imputation upon him, I think you ought not to go, considering the nature and state of this publication.

The jury returned a verdict for the plaintiff, damages FIFTY POUNDS.

In the cause of Troy v. Hales, for the same libel, Mr. Erskine signified that the plaintiff would be satisfied with nominal damages and his costs. A verdict of ONE SHILLING was given accordingly.

674. Trial of the Right Honourable HENRY Lord Viscount MELVILLE, before the Lords House of Parliament in Westminster Hall, for High Crimes and Misdemeanors whereof he was accused in certain Articles of Impeachment exhibited against him by the Knights, Citizens, and Burgesses in Parliament assembled, in the Names of themselves and of all the Commons of the United Kingdom of Great Britain and Ireland, April 29—June 12: 46 GEORGE III. A. D. 1806.\*

#### INTRODUCTORY NOTE.

In order fully to understand the merits of this case, it is necessary that the reader should peruse the tenth Report of the Com-

\* "In pursuance of an order of the House of Peers of the 12th day of June, 1806, I do appoint Joseph Gurney and William Brodie Gurney to print and publish the whole proceedings in the House of Peers, upon the impeachment exhibited by the knights, citizens, and burgesses in parliament assembled, in the names of themselves, and of all the Commons of Great Britain and Ireland, against Henry lord viscount Melville, for high crimes and misdemeanors, and do forbid any other person to print or publish the same.

"ERSKINE, C."

By the licence of Mr. Gurney I am permitted to avail myself of his report of this important trial.

missioners of Naval Inquiry, which was, on February 13, 1805, ordered by the House of Commons to be printed, and which gave rise to the impeachment of lord Melville. The report is therefore printed at the end of this trial by way of Appendix.

The following is a brief sketch of the proceedings which took place in parliament between the presentation of the tenth Report and the trial of lord Melville.\*

\* N.B. Copies of the letter from lord Melville to the Commissioners of Naval Inquiry, dated March 28, 1805, and of the letter from the Commissioners to his Lordship, dated April 2, 1805, were (on the motion of the chancellor of the Exchequer—*vide* 4 Hans. Parl. Deb. 165) presented to the House of Commons on April 3, and ordered to be printed. These letters will be found in the proceedings on the fourth day of the trial, *infra* when they were given in evidence.



On Monday, April 8th, 1805, Mr. Whitbread, in the House of Commons, after a speech of considerable length, arraigning the conduct of lord Melville [then first lord commissioner of the board of Admiralty] while treasurer of his majesty's navy, moved the following resolutions:—

- “ 1. That on the 18th of June, 1782, the House of Commons, in a committee of the whole House, came, amongst others, to the following resolutions:—‘ That it is the opinion of this committee, that some regulations ought to be adopted, for the purpose of lessening and keeping down the balances of public money which appear to have usually been in the hands of the treasurer of the navy, and it would be beneficial to the public if the first and other clerks in the different branches belonging to the said office were paid by fixed and permanent salaries, in lieu of all fees, gratuities, and other perquisites whatsoever. That it is the opinion of this committee, that from henceforward the paymaster general of his majesty's land forces, and the treasurer of the navy for the time being, shall not apply any sum or sums of money imprested to them, or either of them, to any purpose of advantage or interest to themselves, either directly or indirectly. That it appears to this committee, that the commissioners appointed to examine, take, and state the public accounts of the kingdom, have, so far as appears from the Reports which they have hitherto made, discharged the duty intrusted to them with great diligence, accuracy, and ability; and if parliament shall carry into execution those plans of reform and regulation which are suggested by the matter contained in the Reports of the said commissioners, it cannot but be attended with the most beneficial consequences to the future welfare and prosperity of this kingdom.’
- “ 2. That in furtherance of the intention of the House of Commons expressed in such Resolutions, his majesty, by his warrant dated June 26, 1782, directed that the salary of the treasurer of the navy should be increased to the sum of 4,000*l.* per annum, in full satisfaction of all wages and fees, and other profits and emoluments theretofore enjoyed by former treasurers.
- “ 3. That it appears to this committee, that during the treasurership of the right hon. Isaac Barré, the conditions of the aforesaid warrant were strictly complied with; that the whole of the money issued from the Exchequer to Mr. Barré for naval services was lodged in the Bank; that it was never drawn from thence previously to its being advanced to the sub-accounts to be applied to the public service;

that during the time Mr. Barré acted as treasurer and ex-treasurer, he had not in his possession or custody any of the public money, and that neither he nor the paymaster of the navy did derive any profit or advantage from the use or employment thereof.

- “ 4. That the right hon. Henry Dundas, now lord viscount Melville, succeeded to the office of treasurer of the navy on the 19th of Aug. 1782, when a farther addition was made to the salary of the said office, in order to produce a nett annual income of 4,000*l.* after the payment of all taxes and charges on the same; and that this additional salary was considered by the said lord viscount Melville as granted to him in lieu of all wages, fees, profits, and other emoluments enjoyed by former treasurers.
- “ 5. That the said lord viscount Melville continued in the said office till the 10th of April, 1783; that being asked, whether he derived any advantage from the use of the public money during that period, he, in his examination before the commissioners of Naval Inquiry, declined answering any question on that head; but that he has, in a letter since written to the said commissioners, and dated the 28th of March last, declared, that, previous to 1786, ‘ he did not derive any advantage from the use or employment of any monies issued for carrying on the service of the navy.’ But Mr. Douglas, who was paymaster, being dead, and his lordship having refused to answer any question on this head as aforesaid, no evidence has been obtained as to the application of monies issued for the service of the navy, or the mode of drawing the same from the Bank during this period.
- “ 6. That the hon. C. Townshend, now lord Bayning, held the office of treasurer of the navy from the 11th April, 1783, to the 4th of Jan. 1784; and that from the examination of his lordship it appears, that during his treasurership, no part of the money issued for the service of the navy, was applied to his private use or advantage; and that he does not believe that Mr. Douglas, who acted under him as paymaster, derived any profit or advantage from the use or employment of the public money, except the money issued for the payment of Exchequer fees.
- “ 7. That the right hon. Henry Dundas was re-appointed treasurer of the navy on the 5th of Jan. 1784, and continued in the said office until the 1st of June, 1800.
- “ 8. That in the year 1785, an Act of parliament was passed (25 Geo. 3rd, cap. 31), intituled, ‘ An Act for better regulating the Office of Treasurer of his Majesty's Navy;’ whereby it is directed,



that no money shall be issued from the treasury to the treasurers of the navy; but that all monies issued for naval services shall be paid to the Bank on account of naval services, and placed to the account of the treasurer of the navy, and shall not be paid out of the Bank unless for naval services, and in pursuance of drafts signed by the treasurer, or some person or persons authorized by him, which drafts shall specify the heads of service to which such sums are to be applied, and that the regulations under the said act shall take place from the 31st of July, 1785.

" 9. That the execution of the said act was postponed till the month of January, 1786, and from that time till the month of June, 1800, when lord Melville left the office of treasurer, contrary to the practice established in the treasurership of the right hon. Isaac Barré, contrary to the resolutions of the House of Commons of 18th of June, 1782, and in defiance of the provisions of the above-mentioned act of the 25th Geo. 3rd, c. 31, large sums of money were, under pretence of naval services, and by a scandalous evasion of the act, at various times, drawn from the Bank, and invested in exchequer and navy bills, lent upon the security of stock, employed in discounting private bills, in purchasing Bank and East India stock, and used in various ways for the purposes of private emolument.

" 10. That Alexander Trotter, esq. paymaster of the navy, was the person by whom, or in whose name, the public money was thus employed; and that in so doing, he acted with the knowledge and consent of lord viscount Melville, to whom he was at the same time private agent, and for whose use or benefit he occasionally laid out from 10 to 20,000*l.* without considering whether he was previously in advance to his lordship, and whether such advances were made from his public or private balances.

" 11. That the right hon. lord viscount Melville having been privy to and connived at the withdrawing from the Bank of England, for purposes of private interest or emolument, sums issued to him as treasurer of the navy, and placed to his account in the Bank, according to the provisions of the 25th Geo. 3rd, c. 31, has been guilty of a gross violation of the law, and a high breach of duty.

" 12. It farther appears, that subsequent to the appointment of lord Melville as treasurer of the navy, in 1784, and during the time he held that office, large sums of money, issued for the service of the navy, were applied to other services; and that the said lord Melville, in a letter written in answer to a precept issued by

the commissioners of Naval Inquiry, requiring an account of money received by him, or any person on his account, or by his order, from the paymaster of the navy, and also of the time when, and the persons by whom, the same were returned to the Bank or paymaster, has declared, that he has no materials by which he could make up such an account, and that, if he had materials, he could not do it without disclosing delicate and confidential transactions of government, which his duty to the public must have restrained him from revealing.

" 13. That lord Melville, in applying monies issued for the service of the navy to other services, stated to have been of so delicate and confidential a nature, that, in his opinion, no account can or ought to be given of them, has acted in a manner inconsistent with his duty, and incompatible with those securities which the legislature has provided for the proper application of the public money."

On the question being put on the first resolution, Mr. Pitt, first lord of the treasury and chancellor of the exchequer, moved as an amendment, "That the tenth Report of the Commissioners of Naval Inquiry be referred to a Select Committee of this House, to examine the matter thereof, and report the same to the House:" He was however afterwards induced (in order that, whether they were carried or not, Mr. Whitbread's resolutions might be entered on the Journals) to withdraw this amendment, and in lieu thereof to move the previous question; stating it to be his intention, if he should succeed on the motion for the previous question, and thereby get rid of the original resolutions, to move for the appointment of the committee as in his first amendment. A very long and interesting debate ensued, the result of which was, that on a division the numbers were equal; that the question be now put, 216—Noes, 216.

The Speaker, Mr. Abbot, then gave his casting vote in favour of the question, and the first ten Resolutions were forthwith agreed to. Mr. Pitt then proposed to amend the eleventh Resolution by leaving out the concluding words, "been guilty of a gross violation of the law and a high breach of duty," and substituting the words "acted contrary to the intentions of the said act." This amendment however he withdrew, and proposed to insert after the words "private interest or emolument" the words "of Mr. Trotter," to which last-mentioned words, in the proposed amendment, were afterwards added the words "as acknowledged by lord Melville." The amended motion then stood thus: "That the right hon. lord viscount Melville having been privy to, and connived at, the withdrawing from the Bank of England, for the purpose, as stated by lord Melville, of private emolument to Mr. Trotter, sums issued to lord Melville as treasurer of the navy, and placed to his account



in the Bank, according to the provisions of the 25 Geo. 3rd, c. 31, has been guilty of a gross violation of the law, and a high breach of duty." The original motion of Mr. Whitbread however was ultimately carried, the amendments being rejected.

Mr. *Whitbread* then moved an address to his majesty, praying him to remove lord Melville from his councils; but the debate having lasted till five o'clock in the morning of Tuesday, April 9th, the consideration of this motion was postponed until the next day, Wednesday, and the House adjourned until that day.

On Wednesday April 10th, the Chancellor of the Exchequer communicated to the House that since they had last met, lord Melville had tendered to his majesty his resignation of the office of first lord of the admiralty, which resignation had been accepted.

Mr. *Whitbread* then moved, that the resolutions of Monday should be read. It was however ordered that the eleventh Resolution only should be read. That resolution having been read accordingly, Mr. Whitbread moved "that an humble address be presented to his majesty, praying that his majesty will be graciously pleased to remove lord viscount Melville from *all* offices held under the Crown during pleasure, and from his councils and presence for ever." A very animated debate\* ensued, which ended in Mr. Whitbread's moving that "his original motion be withdrawn;" which being agreed to, the hon. gent. proposed, "that the resolutions of Monday be entered as read;" which was also agreed to. His next motion was, "that these resolutions be laid before his majesty." This motion was agreed to *nem. con.*

Mr. *Whitbread* again rose, and said, that he thought the most solemn mode of carrying such an important step into execution ought to be adopted on the present occasion; on that account he should propose, "that these resolutions be laid before his majesty by the whole House." The motion having been agreed to, it was ordered "that such of the members as were of his majesty's most honourable privy council should wait on his majesty, to know when he would be graciously pleased to receive the same."

On Thursday, April 11th, the House adjourned until Thursday the 25th; and immediately after, the right hon. the Speaker, followed by several members, went up to St. James's-palace with the Resolutions of Monday the 8th.

On Thursday, April 25, the *Speaker* reported to the House, that the House attended

\* A good report of this debate is given in 4 Hans. Parl. Deb. 328, to which the reader is referred, for the reasons which induced Mr. Whitbread to withdraw his motion.

his majesty on the 11th instant, with the resolutions of the House of the 8th instant, relative to lord viscount Melville, whereupon his majesty was pleased to give the following most gracious answer: "Gentlemen; I shall on all occasions receive with the greatest attention any representation of my Commons; and I am fully sensible of the importance of the matter which is the subject of your resolutions."

After some other business had been gone through, his majesty's answer was, on the motion of Mr. Whitbread, again read. Some conversation then took place between Mr. Whitbread and the Chancellor of the Exchequer\* as to the propriety of expunging the name of lord Melville from the list of the privy council: Mr. Whitbread, after having given notice of a motion for a future day on this subject, proceeded to move, "That a select committee be appointed to make further inquiry into the matters contained in the report of the commissioners, and to report the same, with their opinions and observations thereon, to the House." Upon which the chancellor of the Exchequer proposed the following amendment; "That a select committee be appointed, to consider further of the matter contained in the tenth report of the commissioners of Naval Inquiry, so far as the same relates to the application of sums granted for navy services to other branches of the public service, as also to the irregularities committed in the mode of drawing the money granted for the service of the navy from the Bank, and to any communications that might have been made to the chancellor of the Exchequer, or the lords of the Treasury, relative to such irregularities; and to the proceedings that might have been taken for recovery of the arrears due of the late Mr. Jellicoe."

After a debate of some length† a division took place; the numbers were for the amendment, 229; Against it, 151:—Majority, 78.

Mr. *Whitbread* then proposed the names of 21 members to form the committee; on which the chancellor of the Exchequer proposed that the committee should be chosen by ballot; the House divided on this motion. For a ballot, 251; Contra, 120;—131.‡

On Monday, April 29, Mr. *Spencer Stanhope* moved, "that the attorney-general be directed to take such measures as may appear most effectual in ascertaining and securing, by a due course of law, such sums as may be due to the public by lord Melville and Mr.

\* Vide 4 Hans. Parl. Deb. 398.

† See it, 4 Hans. Parl. Deb. 399.

‡ The committee was accordingly afterwards appointed by ballot; which mode of appointment gave rise to some curious and interesting debates, especially as to the practice of circulating lists of the names to be balloted for. Vide 4 Hans. Parl. Deb. 430, 511.



Trotter, in respect to the profits arising from money applicable to the service of the navy, which came into their hands subsequent to the 1st of January, 1786." Whereupon Mr. Bankes proposed as an amendment, that all the words after "lord Melville and Mr. Trotter" be left out, and these words be inserted, "and that the attorney-general be directed to prosecute the said lord Melville and Mr. Trotter for the said offences." After debate\* the House divided on the question, that the words proposed to be left out stand part of this question. Ayes, 223; Noes, 128:—Majority, 95.

The amendment being thus rejected, the original motion was carried.

On Friday, May 3, Mr. *Leycester*, attended by several members, brought up to the Lords a message from the Commons, in substance, desiring their lordships permission to a member of that House, lord viscount Melville, to attend a committee of the House of Commons to whom was referred the consideration of so much of the tenth report of the commissioners of naval inquiry as related to the application of monies imprested to the treasurer of the navy to purposes other than the service of his majesty's navy; and also what communications were made to the lords commissioners of the treasury, or chancellor of the Exchequer, respecting the same, &c.—The messengers having withdrawn,

Lord *Hawkesbury* moved, "that their lordships do send an answer to the message just delivered from the Commons by messengers of their own." Which being ordered accordingly, the messengers from the Commons were ordered to be called in, and the lord chancellor with the usual formalities, communicated to them the resolution of the House. The messengers having retired;

Lord *Hawkesbury* rose to call their lordships particular attention to the proceeding which had just taken place. He would first move, that the standing order be read by the clerk, which was accordingly done. This order imported that no peer of the realm, a member of that House, should attend the House of Commons, or any committee thereof, to answer matters of charge or accusation against themselves, either in person or by their counsel, &c. on pain of being committed to the custody of the black rod, or sent to the Tower during the pleasure of that House. The noble lord then, after a short speech, moved, that the matter be referred to the committee of privileges, and that the clerk be ordered to furnish them with such precedents of cases as may have occurred. This motion was after debate† agreed to, and the committee of privileges ordered to sit on the ensuing Monday for the purpose of taking the subject into consideration.

A similar message was afterwards sent up by the Commons, requesting the attendance of the earl of Harrowby, to which the Lords returned a similar answer.\*

On Monday, May 13th, a message was delivered from the Lords stating, "that the Lords do give leave to the lord Harrowby to come to the select committee of the House of Commons, to whom the tenth report of the commissioners of naval inquiry (respecting the office of the treasurer of his majesty's navy) is referred, to inquire into the application of any monies issued to the treasurer of the navy for naval services to purposes not naval, and whether any, and what representations were made to the lords commissioners of his majesty's treasury, or the chancellor of the Exchequer, respecting the withdrawing from the Bank any sums of money so issued since the passing of the act of 25 Geo. 3rd, c. 31; and also into the proceedings had for the recovery of the debt due to the Crown by the late Adam Jellicoe; in order to be examined at that committee, if his lordship thinks fit;" and also, "that the Lords do desire a present conference with this House, in the painted chamber, upon the subject matter of their message to the Lords, on Friday, the 3rd day of this instant May, desiring that their lordships will give leave to lord viscount Melville to come to the select committee of this House, to whom the tenth report of the commissioners of naval inquiry (respecting the office of the treasurer of his majesty's navy) stands referred, in order to be examined at that committee." And then the messengers withdrew.—Resolved, that this House doth agree to a conference with the Lords, as is desired by their lordships. And the messengers were again called in; and Mr. Speaker acquainted them therewith. And then they again withdrew.—Ordered, that a committee be appointed to manage the said conference. And a committee was appointed accordingly. Then the names of the managers were called over, and they went to the conference; and being returned; Mr. *Leycester* reported, "that the managers had met the Lords at the conference, which was managed on the part of the Lords by the duke of Norfolk; and that the conference was to acquaint this House, that the Lords, always desirous that a good intelligence and right understanding should be maintained betwixt the two Houses, and persuaded that

\* On May 6th, Mr. Whitbread again introduced to the House the consideration of addressing his majesty to erase the name of lord Melville from the privy council book, and to banish him from his councils and presence for ever. In consequence, however, of the chancellor of the Exchequer stating, that the erasure would take place on the first day on which a council would be held, the matter was not further agitated. Vide 4 Hans. Parl. Deb. 600.

\* Vide 4 Hans. Parl. Deb. 497.

† Vide 4 Hans. Parl. Deb. 588.



nothing can tend more effectually thereunto than a close adherence to the ancient and regular methods of proceeding between the two Houses, have desired this conference upon the subject matter of the message sent by the House of Commons for leave for the lord viscount Melville to attend the select committee of that House in order to be examined, to communicate to the House of Commons;—that it appears undeniably, by an uniform series of precedents down to the present time, that the course adopted by the Lords, respecting the giving leave to the members of their lordships House to go down to the House of Commons, has been, to permit the members of their lordships House, on their own request, to defend themselves in the House of Commons, if they think fit, on any points on which that House has not previously passed any accusatory or criminating resolutions against them; and also, to permit the members of their lordships House, on the request of the House of Commons, to give evidence, if they think fit, before that House, or any committee thereof, on those points only on which no matter of accusation or charge is at that time in any manner depending against them before that House, whether the same shall then have been resolved by the House of Commons or not.—That the Lords had also directed them to acquaint the House of Commons, that their lordships, relying with the most perfect confidence that the House of Commons are at all times as desirous to preserve the privileges of the Lords as to maintain their own, have given leave to lord viscount Melville (who had also previously made it his own unqualified request) to go down to the select committee of the House of Commons, to whom the tenth report of the commissioners of naval inquiry (respecting the office of the treasurer of his majesty's navy) is referred, to inquire into the application of any monies issued to the treasurer of the navy for naval services to purposes not naval, and whether any and what representations were made to the lords commissioners of his majesty's treasury; or the chancellor of the Exchequer, respecting the withdrawing from the Bank any sums of money so issued since the passing of the act of 25 Geo. 3rd, c. 31; and also, into the proceedings had for the recovery of the debt due to the crown by the late Adam Jellicoe; in order to be examined at that committee, if he shall so think fit; his lordship, nevertheless, conforming himself in all respects to the course directed to be communicated to the Commons as above.\*

On Monday, May 27th, Mr. *Leycester* brought up the report† of the committee to

\* See Mr. Hatsell's observations on this message, 4 Precedents, 152, note; edit. of 1818.

† This report will be found in the Appendix to the trial, *infra*.

which certain parts of the matter contained in the tenth report of the commissioners of naval inquiry had been referred. The report was ordered to lie on the table. The hon. and learned gent. then moved, that the report be printed for the use of the members. This was also agreed to.

On the same day Mr. Whitbread gave notice of a motion for the impeachment of lord Melville; and on Tuesday the 28th, Mr. Dundas (son of the noble viscount) gave notice that in the event of lord Melville's wishing to be heard in person before the House in justification of his conduct (which wish he had no doubt he would express) he should on the same day on which Mr. Whitbread's motion would come on, move that lord Melville be allowed to be heard.\*

On Tuesday, June 11th, previously to the moving the order of the day on Mr. Whitbread's motion for the impeachment of the right honourable lord viscount Melville,

The *Speaker* rose and addressed the House in the following words: I hold in my hand a letter which I am desired to communicate to the House. It is signed "Melville," and dated "Wimbledon, June 11." The contents of this letter are these: "Sir; having observed, in the votes of the House of Commons, that a committee has been appointed to consider of the tenth report of the commissioners of naval inquiry; and having obtained a copy of a report which that committee has submitted to the House of Commons, I take the liberty of requesting that the House will allow me to be admitted, and heard on the subject of those reports. I have the honour to be, sir, with great respect your most obedient and faithful servant, MELVILLE."

Mr. *Robert Dundas* (son of lord Melville) then observed, that in consequence of the notice which he had formerly given, he would move that lord viscount Melville be admitted into the House to be heard in his own defence according to his request.—The question was put and carried in the affirmative without a dissenting voice.

The *Speaker* ordered the serjeant at arms to attend with the mace at the door, and to inform lord Melville that he might come in. His lordship, who was in waiting, immediately entered, and advanced within the bar, where there was a chair placed for his reception. The *Speaker* said—"there is a chair for your lordship to repose on."—After sitting down for a few moments,

Lord *Melville* rose and spoke as follows:—Hitherto every attempt I have made to be heard in explanation or vindication of my own conduct and character, brought in question by the tenth report of the commissioners of naval inquiry, has been in vain; and, therefore, it is my earliest duty to make my acknowledgments to this House, for that privi-

\* 5 Hans. Parl. Deb. 121, 130, 149.



lege having been at last conceded to me. Under these circumstances, it might be unbecoming in me, in this place, to call in question the justice of any of your proceedings which have already taken place. If, therefore, before making any observations on the report now produced by your own committee, I offer some preliminary considerations, it is only from an anxious hope of being able to satisfy you, that whatever considerations may have guided the wisdom of the House in their past proceedings, it is essential to the ends of justice, that before deciding on this report, now in my hands, you should give a patient and dispassionate hearing to the considerations I wish to offer. I shall, therefore, begin by shortly stating the different modes in which I have attempted to obtain this indulgence. I was examined by the commissioners of naval inquiry, without the knowledge of the objects of investigation, and while they were in possession of the whole of Mr. Trotter's accounts with Messrs. Coutts and Co. It is on the items scattered throughout the pages of those accounts, that their observations on my conduct are made, and from which their conclusions are chiefly drawn; but, when I was before them, not one item of those accounts was shown to me, or explanation asked concerning any one of them. In fact, the first time I ever saw them, or knew that such accounts existed, was when I read them in the tenth report. I am bound to suppose the commissioners conceived a reserve of this nature to be necessary to the objects they had prescribed to themselves in pursuing the inquiry entrusted to them. I shall not, at present, stop to examine into the justice of that mode of proceeding. I mean barely to notice the fact, in illustration of the assertion I have made; that this is the first moment I have been permitted, in any shape, to offer any explanation on the subject of those resolutions which have been enrolled on the Journals of this House, and from thence have found their way to the foot of the throne. With the same view, I allude to my letter, of the 28th of March last, to the commissioners, after the report made its appearance (see the note to p. 550) — As the fact appears on the proceedings of this House of the 8th of April, I need not remark, that another opportunity was denied to me by its decision on the question of instituting an inquiry before proceeding to decision. My letter to lord Hawkesbury is another proof of what I have asserted, and this House is acquainted with the result communicated in the conference between the two Houses of Parliament, by which the hopes I had entertained of some kind of explanation being opened to me, were precluded, and your committee reduced to the necessity of making their report, without receiving explanation from me in any one particular. This was a consequence resulting from the decision of this House on the 8th of April; for, if the criminating resolutions of that day had not

been passed previously to inquiry, there would have been no bar, from the privileges of the House of Lords, to have induced them to restrain me from being examined before the committee. The terms in which I addressed the lords, in my letter to lord Hawkesbury, is a proof that no exertion was omitted by me that could tend to get over the difficulty. — “Wimbledon, 6th May, 1805. My lord, I observe that, on the message from the House of Commons, desiring my attendance to be examined by a committee of their number, your lordship has started a difficulty, founded on a standing order of the House of Lords. I certainly was not aware that such a standing order existed, and had taken for granted, that the licence of the House, to my attending the committee of the House of Commons, would have been given as a matter of course. On a question of privilege, originating in the manner this was done, your lordship will readily perceive the reasons which render it impossible for me to take any part; but, I trust, I am guilty of no improper intrusion, when I put your lordship in possession of my own anxious wishes, that, if possible, the difficulty may be got over, and that I may be at liberty to act upon my own feelings, which, notwithstanding the singular circumstances in which I am placed, urge me most earnestly to express my hopes, that I shall not be debarred from giving my attendance on the committee of the House of Commons, as requested in the message from that House. In stating these sentiments to your lordship, you will, of course, understand yourself at liberty to make any use of them you may think proper. I have the honour to be, &c. (Signed) MELVILLE.” — I cannot conclude this subject, without adverting to another proceeding of this House which has likewise tended, in a very material degree, to limit the means of any explanations being given, which could remove any of the imputations which have been cast upon me. I allude to the resolution of the 29th of April, directing the attorney-general to institute a civil suit, for the recovery of any profits made by Mr. Trotter or myself from the monies issued for naval purposes. I can know nothing with accuracy that passed in this House when this resolution was adopted; but if I am to give credit to those channels of information which are connived at in the daily publications, which are more or less perused by all of us, I am to understand it to have been stated in argument, that if the measure suggested in that resolution was adopted, there could be no further proceeding against me in any other mode. Upon this ground it was opposed by those who are not supposed to have any particular partiality towards me. With the recollection of this in my mind, I may be perhaps forgiven, if I expressed some degree of surprise, when I heard of the intimation given of an intended motion of impeachment. It was not, however, to make this remark, that



I have adverted to this resolution ; I allude to it for the purpose of observing, that the delicacy of your committee to Mr. Trotter, joined to their not having it in their power to examine myself, has certainly tended to deprive me of the benefit of any elucidation that might have arisen from a more minute examination of the subject. Mr. Trotter is not interrogated as to any of the supposed participation which has been stated to have taken place between him and me, neither is he asked, whether he was directed by me to lay out any public money for my benefit ; nor is he examined as to my privity, or knowledge of any of those various modes of using the public money, stated in the twelfth and thirteenth resolutions of the 8th of April. I have been the more pointed in bringing these particulars to the recollection of the House ; because, by some strange perversion of the truth, an insinuation has reached me, that I had omitted, till this last stage of your proceeding, to take any measures for my own vindication. The direct reverse is the fact. And even now I find myself placed in a very awkward situation. Understanding that, in consequence of the general intimation some time ago given in this House, of my desire to be heard in person, new difficulties had been started in another place, I again addressed myself to lord Hawkesbury, by a letter, in the following terms :—"Wimbledon, 7th June, 1805. My lord ; having reason to believe, that, in consequence of a report made to the House of Commons by a select committee, discussions are likely to take place in that House, on which I may be desirous of being heard in explanation and defence of parts of my conduct, I am anxious to obtain the permission of the House of Lords to attend the House of Commons for that purpose, if I should think fit. In my former letter to your lordship of the 6th instant, I expressed to you, as strongly as I could, my anxiety to be afforded some means of removing the imputations which had been laid to my charge, and since that time many circumstances have occurred to increase that anxiety, and I entreat your lordship to give your best assistance to forward the object of my present request. I have the honour to be, &c. (Signed) MELVILLE. To the lord Hawkesbury."—And the resolution of the House of Lords is conceived in the following words: "Resolved, that the lord viscount Melville have leave to go down to the House of Commons, and to defend himself there, if he shall think fit, on all points on which the House of Commons have not previously passed any accusatory or criminatory resolutions against him."—Circumscribed as I am by this resolution, I know I am not at liberty, even with your indulgence, to defend myself against any of the resolutions of the 8th of April last ; and therefore, if inadvertently I should drop any thing that may be so construed, I hope it will be understood that it is not with an intention to arraign in this place the justice of those resolutions, but

with the view of being certain that I understand, and do not misrepresent them. The resolutions of the 8th of April are fourteen in number (see p. 551), to which another was added on the 29th, viz. "that the attorney general be directed to take such measures as may appear to him to be most effectual in due course of law, for ascertaining and recovering any sums of money that may be due to the public from lord viscount Melville, or Alexander Trotter, esq. in respect of any profits derived by them from monies issued for naval purposes, and that may have come into their hands subsequent to the first day of January 1786." The twelfth, thirteenth and fourteenth are chiefly deserving of attention, the previous ones being merely statements of facts, which of themselves could not have attracted any notice. The twelfth resolution contains a statement of a variety of positions, apparently meant to lay the basis for the conclusion drawn in the fourteenth resolution. From the terms of the twelfth, I am left somewhat doubtful, whether it was meant to apply to me personally. But as I cannot suppose it possible that the House of Commons could intend to leave it ambiguous, whom they meant to charge with criminality, I must take it for granted that I am implicated in it ; and I am the more confirmed in this supposition, from having observed the comments which, in other places, have been lavished, without any reserve, upon that resolution, and those comments often made by persons, who being members of parliament, were, I presume, of course, properly informed, and competent to judge of the object of the resolutions which the House of Commons had adopted. In order, therefore, to ascertain the full extent of the charges contained in the twelfth resolution, it must be coupled with, and taken in conjunction with the thirteenth ; and the joint import of the two resolutions is, that "Mr. Trotter did, at various times, under pretence of naval services, and by a manifest evasion of the act, draw from the Bank, and invest in exchequer and navy bills, and lend upon the security of stock, and employ in discounting private bills, and in the purchase of Bank and East India stock, large sums of public money for the purposes of private emolument, and in doing so, he acted with my knowledge and consent, being my private agent." And although the charge does not expressly say so, it certainly concludes in such a manner as must leave a full conviction on the mind of every reader, that "Mr. Trotter, so acting as my private agent, did occasionally lay out ten or twenty thousand pounds in those transactions, for my use and benefit." Upon this charge I must, in truth and justice to myself, solemnly assert, before this House, and in the face of my country, that it is erroneous in every particular. I never knew that Mr. Trotter had drawn any money, for the purposes of private emolument, in manifest evasion of the act. I never knew that he had



invested any money in exchequer or navy bills. I never knew that he had lent upon the security of stock. I never knew that he had employed any money in the discount of private bills. I never knew that he employed any public money in the purchase of Bank or India stock. Having disclaimed all knowledge of these transactions, it is scarcely necessary to add, that if any such existed, they were not, as stated, with my privity and consent; neither have I the smallest knowledge or belief, that Mr. Trotter ever did lay out, for my use or benefit, in any such modes, any sum of public money whatever. Having, in so pointed a manner, disclaimed all knowledge of any of those transactions detailed in the twelfth resolution, I need not stop a moment to express the indignation I must have felt, when I found that not only that knowledge was imputed to me, but that, with a view to give the colour of probability to the insinuation of personal profit arising from such transactions (for no man ventured to advance it as a charge) it was even surmised, that Mr. Trotter had, in the execution of those transactions, enjoyed the benefit of my confidential knowledge of the secrets of government.—I am aware, that, notwithstanding all I have represented, my statement would still be deficient, if I were to pass over in silence a charge, which, if not credited or adopted in this House, has certainly, through the medium of your resolutions, made its way to almost every corner of the kingdom; and it must be within the knowledge or observation of every man, that no pains have been spared, no means neglected, to gain proselytes to the belief of this charge. You will anticipate me, when I mention that of my having been a participator in the profits, which Mr. Trotter is supposed to have made from the public money that has passed through his hands. This is a charge which I had positively denied, before you passed the resolutions of the 8th of April; and if a question to this effect had been put to Mr. Trotter, in any shape, since that insinuation was made, either in the 10th report, or any where else, I have reason to know, that he would have embraced the “opportunity of contradicting, in the most unequivocal and unqualified terms, the malignant invectives against my character, founded on the assertion, that I had, directly or indirectly, participated in any of the emoluments he may have derived from the use of the money imprested for naval services and entrusted to his charge, and that I never was, at any moment when he served under me, in the knowledge either of the nature, extent, or application of those emoluments.”—I am at a loss to conjecture, whether, notwithstanding such direct and solemn assertions made by those who alone can be informed of the truth, this calumny is still to be believed and circulated. But there is one fact in refutation of it, which cannot fail to carry full conviction to the mind of every man; if that upon which it rests is

not disbelieved or disapproved. I allude to the circumstance of which (in the midst of the loudest clamours against me) a denial has never been attempted, that every sum advanced to me by Mr. Trotter, in any shape, or on any account, has been repaid to the uttermost farthing, and that I am not indebted upon the treasurership in question, in one single mite, either to him, or to the public. Is this reconcileable with the idea of participation? The term supposes receipts, arising out of a joint concern, upon which profits have arisen and are divided, and of course excludes the supposition of any restitution; and I should trust, that this observation must for ever silence those who have been the most active in the propagation of this aspersion.—Not only in the resolutions upon which I have been observing, but in other modes and in other places, my connexion with Mr. Trotter, as my private agent, has been so often alluded to, and its having been insinuated for the most malevolent purposes, that my connexion with him was so intimate, as to procure for him a communication of the confidential transactions of government, I trust it will not be deemed foreign to the purpose of my attendance in this House, if I detain gentlemen a few minutes on this subject.—When I came into the navy pay-office I found him there, having been introduced to it, as I understand, in consequence of his relationship to the late sir Gilbert Elliot and Mr. Coutts. He was, from these connexions, countenanced by Mr. Douglas, the paymaster, and occasionally with me in the course of official business. But he attracted my particular notice, by his zeal in pointing out to me the many means that were used to deprive the seamen and their families of the full amount of what they were justly entitled to. He was encouraged by me to prosecute those inquiries, and I was indebted to him for many of those suggestions, which enabled me, during the time I was treasurer of the navy, to propose to parliament, and place upon the statute book, that system of regulations and arrangement, which has since given complete security, comfort, and protection, to every person, of every rank in the military service of the navy, and after their deaths, has extended the same benefits to their widows and children. These circumstances naturally increased my favourable dispositions towards Mr. Trotter, and I selected him for the office of paymaster on the death of Mr. Douglas. In consequence of this, he was in the receipt of my salary, and being constantly, from his situation, near me, he became naturally the channel, through which I had it in my power to conduct many inferior transactions relating to my private affairs.—The following is a copy of the power of attorney, by which, as treasurer of the navy, I authorized Mr. Trotter to draw the money from the Bank of England: “Know all men by these presents, that I, the right hon. Henry Dundas, treasurer of his majesty's navy, as well within Great Britain



as without, have nominated, constituted, and appointed Alexander Trotter, esq. my paymaster, hereby giving and granting to him full power and authority to draw on the governor and company of the Bank of England, for and upon my account, as treasurer of his majesty's navy, all and every sum and sums of money that now are, and shall hereafter be, wanted for the public services, under my care of payment, he being particularly careful to specify in each and every draft the service for which the money is drawn."—Such is the short history of the origin and progress of Mr. Trotter's connexion with me in business, either public or private; and whatever cloud may now hang over him, and however some parts of his conduct may have recently brought upon me much disquietude and anxiety, I shall never refuse to him the justice of acknowledging, that, under his management, the pay-office of the navy was conducted, for a period of fourteen years, without one payment being a moment delayed at the treasurer's office, and an account of not less than one hundred and thirty-four millions sterling has been closed, without the loss of one farthing having arisen to the public during the whole of that period.—I now proceed to the fourteenth resolution, which is in the following words:—"That the right hon. lord viscount Melville, having been privy to, and having connived at, the withdrawing from the Bank of England, for the purpose, as stated by lord Melville, of private emolument to Mr. Trotter, sums issued to lord Melville as treasurer of the navy, and placed to his account in the Bank, according to the provisions of the 25th Geo. 3rd, cap. 31, has been guilty of a gross violation of the law, and a high breach of duty."—Before examining the justice of the conclusion drawn in the end of this resolution, it is essential to understand the fact on which it is grounded, and which I am certain is altogether misunderstood. It is assumed, and my own authority quoted for it, that I was privy to the withdrawing from the Bank of England, for the purpose of private emolument to Mr. Trotter, sums issued to me as treasurer of the navy. If by these words it is meant to convey, that Mr. Trotter had any power or authority from me, to draw sums indiscriminately from the Bank for his own use or emolument, I deny that I was privy to any such transactions. I deny that I ever said so, and I affirm, there is no evidence to justify such an assertion. But if it is meant to state, that after the money was drawn by assignments, under the authority of the competent boards, it was illegal to put it into the custody of Mr. Coutts, instead of putting it in the iron chest, or in the hands of the respective sub-accountants, I am yet, after all I have heard, to learn, that in doing so, the act of parliament was violated.—That an indiscriminate power of drawing from the Bank was given by me to Mr. Trotter, I conceive, cannot be alleged by any person who attends to the real import of

my evidence. The first question put to me on this subject, by the commissioners of Naval Inquiry, was in the following words:—"Did you authorize the paymaster, in or about the year 1786, to draw the money applicable to naval services from the Bank, and lodge it in the hands of a private banker?" My answer was—"I cannot precisely fix the time; but I am certain, that I did permit Mr. Trotter to lodge any money drawn from the Bank, for public purposes, in his private banker's hands, during the period it was not demanded to the purposes for which it was drawn." The plain import of this answer is, that when the money was legally, and in terms of the act of parliament, drawn from the Bank, I permitted Mr. Trotter to lodge such balance of the money assigned, as was not called for by the person or persons entitled to receive it. But there is not a syllable in the answer to import, that I gave Mr. Trotter authority to draw from the Bank, for his own private emolument, any sum that had not been assigned or drawn in terms of the provisions of the act of parliament. This proposition, which I aver to be the meaning of my answer, is made still more clear in an after part of my evidence. The commissioners put a question to me in the following words:—"As the money applicable to naval services was directed to be lodged in the Bank, by the act of 25 Geo. 3rd, cap. 31, and not to be drawn from thence without specifying the services for which it is drawn, by what authority did you give permission to the paymaster of the navy to draw the money out of the Bank, and lodge it in the hands of private bankers?"—From the terms of this question it struck me, that the commissioners were proceeding on the same mistake as that which seems to be countenanced by the general words made use of in the fourteenth resolution; I therefore immediately rectified their error by my answer, which is in the following words:—"I take it for granted, it always was drawn under the heads of service, pointed out in the act of parliament; and when I talk of permission, I mean it under the explanation contained in the answer to a former question, in which I suppose the money drawn under competent authority." From this plain statement, I feel myself authorized to repeat the assertion I have already made, that this resolution, adopting the general terms it has done, assumes and proceeds on a fact not warranted, either by the truth of the case, or by the evidence contained in the tenth report of the commissioners of Naval Inquiry; and I must here be permitted to add, that the assumption in the fourteenth resolution, of the fact to which I have adverted, came upon me with the more surprise, as, in the report of the commissioners, they have distinctly stated the import of my evidence to be what I have now explained. The passage to which I allude is in the tenth report (see the Appendix *infra*), and in the following words:—"Lord Melville states, that he certainly did permit Mr. Trot-



ter to lodge any money drawn from the Bank, for the public purposes, in his private banker's hands, during the period that it was not demanded for the purposes for which it was drawn; but it is to be inferred from his evidence, that he intended Mr. Trotter to draw upon the Bank for the amount only of the assignments made on him by the different boards (an account of which is furnished to him daily), and that the balance of such sum, till demanded, should alone be lodged by Mr. Trotter in the hands of his private bankers."

—Having thus ascertained the fact as it truly stands, the next consideration is, what is the act of parliament, which, according to this state of the fact, the resolution affirms to be violated? I contend, that there is not one clause of the act prohibitory of the permission to lodge assigned money in the hands of a private banker, till the money so assigned is applied for by the person entitled to it. I hope I state my proposition distinctly, and desire it to be adverted to, that the point I at present discuss is altogether unconnected with the question, what use was made of the money when so lodged? That is a separate question, and they ought not to be blended together. I am now, in this part of the discussion, examining the truth or falsehood of a proposition, whether there is any thing in the act of parliament to prohibit lodging the balance of assigned money, till called for, in a private banker's hand? Suppose the case, that instead of lodging the money, of the description I have stated, in a private banker's hands, the practice had been to open a separate account in the Bank of England, for the deposit of such assigned money, till called for; I would ask, whether this would be a violation of the act of parliament? Nobody would have contended, that in such an arrangement, the treasurer of the navy would have violated either the letter or spirit of the act in any one respect, or that he would have met with the smallest blame from any quarter in exercising that discretion, whereby he would be enabled to draw out the assigned money from the separate account, without having recourse to the general account raised in his name, in terms of the provisions of the act of parliament. And yet, if the proposition is true, that no draft could be made, except on the general account raised at the Bank in the name of the treasurer, the violation would equally exist in the supposed as in the real case.—The error of the opposite argument consists in supposing, that the object of the act of 1785 went to an extent in its provisions, beyond what was ever in the view of those who proposed it, or of the legislature which passed it. It was not a law intended to embrace all the regulations, which it might be expedient, either by legislative provisions, or by official arrangements, to establish, for the conduct of that great machine, which has now become necessary for the regular payment of the naval service. The single object which

the act had in view was, to convert the treasurer's account from a personal to an official account, and thereby to obviate an abuse which had been so much complained of, whereby ex-treasurers of the navy had large balances in their hands, and remained great public accountants, many years after they were out of office. To this object its provisions are complete, and have been accurately complied with; but, if you expect to find in that act such a digest of regulations, as to exclude, in the management of the office, the discretion of the treasurer as to many parts of his duty, you will search in vain. Even that arrangement, which has of late been so much the subject of discussion, I mean the establishment of a fixed salary to the treasurer, in place of his former emoluments from the use of the balance in his hands, is not provided for or regulated by this act of parliament; that was done by the terms of his patent, several years before the act of parliament existed. The observation I have just made will appear the more forcible, if gentlemen will take the trouble of referring to the act which passed in 1783, for regulating the office of the paymaster-general of his majesty's land forces. It repeals an act which had been passed on that subject in the preceding session, and enacts a new code and system of regulations, amounting to no less than thirty-nine clauses, and embracing minutely every circumstance connected with the business of that office. Is there any such system of regulation contained in the act now under consideration? Certainly not. It is a short act, of twelve clauses, confined to the only immediate object at that time in view, viz. what I have already expressed, the converting the treasurer's account from a personal to an official one; but not regulating, or professing to regulate, the whole conduct of that department.—Not adverting to what I have just observed, I cannot help conceiving that gentlemen mislead themselves, by assimilating the navy pay-office, in a great degree, to the army pay-office, and supposing that, in all respects, the one has been regulated, or can be regulated, by the principles of the other. In this they are totally mistaken. The navy pay-office is to the navy, what not the army pay-office alone, but the army pay-office, with the addition of army agents, of colonels of regiments, of barrack-masters, and other subordinate accountants, is to the army. The army pay-office issues gross sums, to be subsequently distributed by persons holding no situation in the office. The navy pay-office makes the minutest individual payments; the fraction of a single seaman's yearly pay, or the quarterly allotment of a seaman's wife. It may be practicable to make all army payments by specific drafts to individuals; but it is impossible, with regard to the navy payments, many of which are for such small sums. I have been informed, that in twenty-six days of the month of January last, the payments



amounted to six thousand four hundred and two in number; of which no less than three thousand two hundred and seventy-eight were of sums under twenty pounds; and one thousand eight hundred and ninety-four, in sums from one pound eight shillings, to ten shillings and sixpence. Again, as to wages, there were recently, if I am accurately informed, not less than six thousand eight hundred ships books open in the pay-room of the office, upon any one of which, at any hour, a call might be made for the wages of any seaman who might happen not to have been present at the payment at the out-port, for the money due to him for four or five years, or as many months' service.—No person will contend, that in the cases referred to, it is possible to carry on the business of the department by specific drafts, in favour of the respective individuals, and I understand the impossibility has been distinctly admitted. But is it possible, consistently with this admission, not farther to admit, that it could not have been in the contemplation of the act of parliament, by minute provisions, to regulate the whole conduct of the office, or to alter the whole former practice, by a few provisions, directed to the single object of altering the nature of the treasurer's account? If such had been the view of those who proposed this act, is it possible that some clause or clauses would not have been introduced, to explain that the general expression of drafts did not mean to imply specific drafts, in payment of individuals, of such sums as those which I have just referred to? This subject was left, as it formerly had been, to the discretion and official arrangement of the treasurer, on such principles as might be most expedient and practicable for conducting the business of the office. It is sufficient, for the purpose of my present argument, to contend, that the expression of drafts, in the language of the act of parliament, neither did nor could mean, specific drafts, in the name of each individual entitled to receive the sum drawn for.—In like manner I contend, that an authority derived from any of the competent boards, in the shape of one or more assignments upon the treasurer, did not render it necessary in the payment of such assignments, that it should be done by specific drafts, in favour of the person entitled to receive it. In the sound construction of the act of parliament, the sums authorized by the assignments were fairly and legally drawn, from the moment the assignments were made, nor did it make any difference in the execution of the act, whether the sums assigned were drawn from the Bank in one draft or in ten drafts. Put the case, that ten, or any given number of the holders of assignments, had intimated a wish to receive their payment at the office, or at Messrs. Coutts's, on a particular day; it surely could not be maintained, that the paymaster of the navy was debarred from gratifying them in that wish, or that he was guilty of an illegality, if he made the payment agree-

ably to the mode suggested by themselves.—It becomes still more difficult to believe, that any such alteration was intended by the act, when it is recollected, that the subject was brought distinctly under the view of those who passed the act in question; and yet no such prohibition, as now supposed, was either directly or indirectly inserted in the act. It has been repeatedly stated and it is true, that the act of parliament originated in the report of the commissioners in 1782. These commissioners, speaking of the difference between the treasurer's statement of the balance in his hands on a given day, and that of the navy-board, say—"This difference lies in the cashier's and victualling branches, and arises from the following cause: When the boards assign bills upon the treasurer for payment, they immediately give him credit for those bills in his account kept at their offices; but the treasurer does not himself take credit for any bills in his own account till he actually pays them. The persons who receive these bills do not always immediately present them to the treasurer for payment, but frequently keep them in their possession for a considerable time. The treasurer's balance must therefore exceed the navy balance, as much as the sum of the bills assigned upon him for payment exceeds the sum of the bills actually paid by him. We conceive this excess is not money for which the treasurer is accountable to the public, but belongs to the proprietors of those bills, and remains in his hands, at their risk, until they apply to him for payment."—In these words, the existence, nature, and consequences of the assignments not called for, are distinctly and accurately pointed out; and is it possible to conceive, that if this act of parliament had meant to make any provision respecting these assignments, it would not have been done, in some such plain and precise manner, as to exclude all doubt upon the subject? It would not have been left to doubtful implication or construction of the act, which has already, in the case of small payments, been clearly proved not to mean generally specific drafts to individuals, as contended for in that construction of the act which I have endeavoured to refute. It will be clearly understood, that in the argument I have stated, I only contend that the act of parliament had not this point in contemplation, and therefore it is unwarrantable to argue, or to resolve, that it has been violated, by any practice which has taken place in the navy pay-office during my treasurer-ship. Before quitting this subject, I must not omit to observe, that the practice of lodging naval money in the hands of Messrs. Coutts continued for two years after I was out of office, and that it was altered ultimately by Mr. Bathurst, not on a clear decision formed by him of its illegality, but because he thought it expedient; and the doubts entertained by lord Harrowby, during his treasurer-ship, arose from conceiving, that the practice was in-



consistent with the spirit, if not with the letter of the law. I do not mean to insinuate, that they were aware of the money being again withdrawn from Messrs. Coutts, for the purpose of private emolument to the paymaster. My observation only goes to the point of stating, that the abstract proposition of the illegality of the practice of lodging assigned money in the hands of a private banker had not occurred to those able men, in the strong light it has been resolved with regard to me; otherwise the continuance of it would not have been tolerated for two years after the treasurership of the navy had passed into their hands.—And this leads me to another topic, to which I feel myself warranted to summon the attention of the House, under the circumstances in which I am placed. I have given my reasons in detail, why I contend that the act of parliament has not been violated in any shape; but I submit it to your justice to consider, how far I am, for the object of my present attendance, under the necessity of arguing my proposition to the full extent I have stated. A law may be violated without being grossly violated, and a breach of duty may be committed without warranting the appellation of a high breach of duty. My arguments may have failed in convincing you, that my construction of the act is the true one, and you may remain of opinion, that its provisions extended to objects, which I contend were never within its contemplation. I can only say, that my judgment continues unaltered, and that I never had even conceived the doubt as to the meaning of the act, till the period of the late discussions, from which I am certainly bound to doubt my own opinion, when it differs from others whose talents I sincerely respect; but I cannot carry my acquiescence so far as to admit, that an error of judgment, resting upon the grounds I have stated, ought to have subjected me to such criminating resolutions, as those which this House recorded on the 8th of April last.—Having endeavoured, as clearly as I can, to explain to the House the grounds on which I contend that no illegality is imputable to me, on the subject of drawing from the Bank the sums assigned by the competent boards, you will immediately perceive the nature and extent of the benefit which I conceived the paymaster might derive, from lodging the money, thus drawn from the Bank, in the hands of Messrs. Coutts. I have already adverted to the transactions referred to in the twelfth resolution, and denied the imputation contained in that resolution, of my being privy to those transactions. My impression, with regard to any benefit the paymaster might derive from the money lodged in Messrs. Coutts's hands, was simply this. I conceived it to arise from an understanding between him and the partners of that house, as to the advantage they might respectively derive from the customary use of money while in their hands; and such an arrangement between them, I know, could

not prevent the paymaster from drawing, at any moment, from Messrs. Coutts's house, any sum requisite for the discharge of any claim to which that deposite money was liable. I beg not to be understood as stating, that I entertained this idea from any actual information I had on the subject; but the impression naturally arose in my mind, from knowing such to be the practice universal in similar cases, not only with the public banks, but all banking houses in another part of the kingdom; and it is only within these three months, that I have been made aware of the mistake, by the perusal of a memorandum, written by Mr. Coutts, the principal partner of that house. This is a precise state of the case and of the impressions I had of it; and when I did not interpose, to prevent the paymaster's enjoying such emoluments, I did not conceive myself to be infringing any act of parliament, nor did I feel that I was incurring, either for the public or myself, the smallest degree of risk, or exposing the business of the office to any inconvenience whatever. I beg leave further to remark, that although I never held out this species of advantage as an established emolument of the office of paymaster, or one which I might not have put an end to at any moment I found it expedient to do so, I certainly never felt it to be a clandestine or mysterious arrangement. Of this I cannot give a stronger proof, than by referring to a fact mentioned in the tenth report of the commissioners of naval inquiry. I mean the suggestion made by former commissioners, in the year 1786, in which they recommend an augmentation of the paymaster's salary from 500*l.* to 800*l.* per annum. But although, from the increase of business which the different acts of parliament had imposed upon the clerks and other officers of the navy pay office, I had been obliged to revise the establishments, and recommend to his majesty in council to make very considerable additions to their salaries, I did not recommend, that any such should be made to the paymaster, under the impression that, in the manner I have stated, he must derive advantages, which rendered it unnecessary to burthen the establishment with an additional salary to him. In fact, no such addition was made till the year 1800, a short time before my leaving the office, when a still further increase of business having been thrown upon the persons doing the duty of the navy pay-office, in consequence of the adoption of many new and beneficial regulations, which since the former period had been added, it became necessary again to revise the establishment, and attend to their earnest representation for an augmentation of their allowances. Then, for the first time, was the augmentation to the paymaster's salary adopted, which had been recommended by the commissioners; and it was done upon the ground of several others, in situations inferior to the paymaster, having been raised to about 600*l.* The aug-



mentation then made was not felt to be adequate to the labour, importance, and responsibility of the office; but it was purposely kept down, on the understanding, undoubtedly entertained by others as well as by me, that the paymaster enjoyed those advantages to which I have alluded. I do not rest upon these circumstances, in the view of justifying the regularity of a practice which may, on other grounds, have been since found to be either improper or irregular; but, certainly, I am entitled to found upon them, as the strongest proof that I meant no concealment in the transaction, and that I felt no consciousness of wrong in what I had done. With the permission of the House, I must, for a few moments, recall their attention to a subject, to which I have hitherto only slightly alluded. I refer to the insinuations thrown out, that my authorizing or conniving at the lodging of the naval money in the house of Messrs. Coutts, could only proceed from an intention of its being appropriated to the purposes of private emolument. Previously to the year 1786, the navy pay office was situated in the city, in the neighbourhood of the Bank, and it was in consequence of its removal to Somerset-place, that the suggestion was made to me of the convenience of putting the money, when drawn from the Bank, in the hands of a respectable house in the neighbourhood of Somerset-place. The reasons given at the time certainly did satisfy me, and after the maturest consideration I can give to the subject, I am not yet convinced, that my opinion was erroneous. It would serve no good purpose, at present, to enter upon a discussion of that subject; but if ever there should be occasion to do so, I think, I can prove, that both the convenience and the security of the public would be better consulted, by the accounts of the sub-accountants being placed in a situation liable to the daily inspection and examination of the paymaster, than by having them raised in their separate names, at so great a distance from the means of such habitual examination. I know that, from the nature of the business, and the necessity of so much of it being done at the outports, it is impossible to procure perfect safety, either to the public or to the treasurer, by any constant and daily inspection of the paymaster; but that is no reason why recourse should not be had to that additional check wherever it can be exercised. The commissioners of naval inquiry are themselves aware of the risks that are run, and, therefore, they have made the following suggestion: "We were surprised to learn, that neither the officers nor clerks in the navy pay office, give any security for the faithful discharge of their duty, notwithstanding the great responsibility of their situations. We are of opinion, that the paymaster, and other officers and clerks entrusted with the public money, should be required to find security, in proportion to the amount of their salaries; for though such se-

curity may not be adequate to the trust reposed in them, we think it would operate strongly, in preventing the misapplication of the public money."—The measure here suggested would give a very small additional security to the public; but the suggestion proceeds on the apprehension that there is a risk, and that being the case, I contend that the risk is increased, by the naval money being intrusted to a variety of persons, whose accounts are remote from inspection and examination, more than it would be, if those accounts were subject to the daily examination and inspection of one individual, to whose accuracy and responsibility the treasurer must principally look for his own security and that of the public. Great pains appear to be taken by the commissioners of naval inquiry, to establish that no inconvenience has ensued from changing the former mode of conducting the business, and having recourse to that which is now practised. Upon all that species of evidence and observation, it is sufficient for me to remark, that the new practice has been, at least, of very short duration. I sincerely hope it will answer the expectations of those who, I make no doubt, have, from the best of motives, adopted it; but, in my own vindication, I cannot refrain from reminding the House, that during the period of sixteen years, when I had the conduct of the office, it was done without any inconvenience or complaint; and, let the new practice prove, on experience, to be as successful as its most sanguine panegyrist can desire, it never can succeed better, as to its effects, than that which has been laid aside to make room for it. Having, in the course of my statement, given to this House a fair and unqualified explanation of every circumstance connected with the purport of the resolutions adopted on the 8th of April last, I am perfectly aware it may naturally suggest itself to many who now hear me, to ask, why I thought it necessary to make any reserve in the answers I gave, when examined by the commissioners of naval inquiry? This question having been put to me by many of my private friends, I can the more readily suppose it to arise in the minds of others. From what I have already stated, it must appear, that it has not been owing to any thing like reluctance on my part, that this doubt has not been long ago removed; and I willingly seize the first opportunity afforded me of explanation, to premise, that the real import of my examination before the commissioners has been either much misunderstood or grossly misrepresented. It has been affirmed, in broad and general terms, that I refused to answer the commissioners, whether I had derived profit from the public money in the hands of the treasurer. I have done no such thing. The commissioners, in their letter to me of the 26th June, called upon me to give them an account of certain particulars in detail, which, for the reasons I assigned in answer, it was literally impossible



for me to do; and I added, that even if I had the means of doing so, I should think it my duty to withhold the information required, on the grounds I stated, alluding to sums which had been occasionally withdrawn for other public purposes, not naval. Perhaps I need not have added this; but let it be observed, that at that time nothing had occurred to create in my mind a suspicion, that any communications made by me to the commissioners were likely to be interpreted to my disadvantage. From that time I heard no more from the commissioners for the space of four months, during which period, it now appears, they had become possessed of all Mr. Trotter's private accounts with the house of Messrs. Coutts. Upon the 2nd of November I received the following summons from the commissioners: "Office of Naval Inquiry, Great George-street, 2nd Nov. 1804. My lord; being desirous of receiving some information from your lordship, relative to the management of the business of the pay-office of the navy during your treasurership, we request you will let us know, what day in the next week, and at what hour it will be most convenient for your lordship to attend us for that purpose."—In consequence of this summons, I immediately attended them, and underwent an examination by questions, obviously prepared with much previous consideration; but as I have already observed, without a communication of one item of these accounts before them, and without an explanation as to any one entry contained in them, and without a conception, on my part, that in that examination I was on my trial, or liable, in consequence of it, to be subjected to severe criminalizing resolutions.—Having given this preliminary explanation, I proceed to state, that upon an accurate examination of the terms of my evidence, you will perceive how much it has been misunderstood, if it is supposed that I had refused in general to answer, whether I had derived benefit from the public money.—At the time of that question being put to me, I had received the unexpected information, that in the advances Mr. Trotter had made to me, on the account current of my affairs, he (Mr. Trotter) had made those advances, without discriminating whether they were made from private funds, or from the public balances in his hands. With the knowledge I possessed, from the information thus given me, of the manner in which he had blended his account, I was induced to adopt a degree of reserve, beyond what perhaps the occasion called for; and upon a review of all circumstances now before me, I am satisfied, that I might then have as directly and as confidently answered the question in the negative, as I can now; conscious as I then was, and as I now am, that at no time did I act, or authorize any other person to act, in contravention of the patent under which I held the office of treasurer of the navy.—The details I have this day given to you must satisfy every man, that

I could have no motive, and that it was even contrary to my interest, to exercise any reserve on this subject. I have understood, that a great deal of acrimony and ingenuity have been resorted to, in the interpretation of another answer I have given. I mean when the question is put to me, "whether I did direct, or authorize Mr. Trotter, while paymaster of the navy, to lay out or apply, or cause to be laid out and applied, any of the money issued for carrying on the current service of the navy, since the first of January 1786, for my benefit or advantage?" I answered by saying, "To the best of my recollection I never did." I have less reason to complain of the animadversions which have been made upon this answer; for I certainly might, and ought to have answered, simply, that "I never did;" and my having prefixed the other useless words, arose (as is well known to those who are in the habits of living and conversing with me) out of a mode of expression customary with me in speaking of past transactions. I have also observed, that on another topic much asperity has been resorted to, founded on the allegation of my having refused to answer questions, on the ground of not being obliged to criminate myself. Of all the imputations I have heard of, I confess this is the one I least expected. If I had been of that disposition, I should not have been exposed to any one of the charges that have been brought against me; and it is the more extraordinary such a one should have arisen, when my accusers have rested the whole of their charges on what they are pleased to call my own confession. The observation is wholly founded on a misrepresentation of my evidence. I never made use of the clause in the act of parliament for any personal reason, but solely to protect me from disclosing any of those irregularities I may be supposed to have committed, in appropriating, for a time, any of the naval money to other public services. So far from feeling that to be any imputation upon my honour, I should have felt myself guilty, not only of a breach of public duty, but a most unwarrantable violation of private honour, if I had disclosed any of those transactions. The information I had received from Mr. Trotter, of his manner of blending his public and private accounts, was the single reason I assigned for not answering any question put to me, respecting my having reaped any benefit or advantage from the money in the hands of the treasurer of the navy. Upon that subject I never had recourse to the defence of not criminating myself. Whatever, therefore, has any where been said upon that topic, may be a proof of dexterity in misrepresentation; but in point of candour or fair statement, it is certainly entitled to no merit. I am informed that another charge still has been alleged against me in different quarters, on which I wish to say a few words, not so much from the importance of the charge itself, as from its being a striking proof of the extent to



which a spirit of rancorous hostility, once yielded to, will be induced to go, in its exertions to inflame itself and the minds of others. The topic to which I allude is that, whereby I have been charged with having no other motive for remaining treasurer of the navy, after I became secretary of state, except the unlawful gains I am supposed to have derived from that situation. What I am now to state does not rest upon my assertion. There is one who now hears me, and others with whom I have at present no connection in politics, who can bear testimony to the fact, that I never was one hour secretary of state with my own inclination. Under the original institution of the board of India commissioners, the treasurership of the navy was understood to be the appropriate situation of the person who was to take the leading part in the management and control of the affairs of India. In that character I had acted many years with great labour; and, perhaps, I may, have had the vanity to suppose, that by a successful administration of that great concern, I had done essential service to my country, and at the same time gratified an ambition, of which no honourable mind has reason to be ashamed; I have no difficulty in acknowledging, that I had a predilection for the India department, and it was the only one in which I ever wished to have been employed. On this ground I declined accepting the seals of the home department at the time lord Grenville was appointed; and when, at a later period, I was induced to accept them, it was under an assurance, that I should only be required to hold them for the short period of probably a few months, till the return from abroad of a noble lord for whom they were destined. He did not return at the time expected, and the very critical and dangerous state of the country which immediately ensued, rendered it impossible for me to decline obeying the commands of my sovereign, at a moment when he was advised, that any exertions of mine might be of use in repelling the dangers with which the constitution of the country was so peculiarly menaced, during the period I was in the home department. When the duke of Portland was appointed to that situation, I again made it my earnest request to his majesty, that I might be permitted to confine my labours to the administration of the affairs of India, and I only desisted from making that request, when specially commanded by his majesty to do so.—I am extremely concerned to trouble the House with such personal details; but I am compelled to do so, by the industry with which my enemies think themselves at liberty to lay hold of every circumstance which they suppose can create prejudice against me. The result of what I have stated on this topic is, that I never had the smallest predilection for the office of treasurer of the navy, except in so far as it was the situation at that time supposed to be appropriated to the person at the head of the admi-

nistration of India.—I shall now proceed to observe upon the report of the committee of the House of Commons, and in doing so, I shall follow the order of the report itself. In the outset, I cannot help expressing my regret for the circumstance stated in the first page of it, and wishing it had occurred to the committee, rather to expunge those questions and answers which appeared to them to exceed the limits of their inquiry, than to leave them in the body of their evidence. The consequence of their not doing so is, that several things are left in the report, calculated to create an impression which would not have existed if the question had been pursued by more minute inquiry; and this inconvenience becomes the more striking, when it is recollected, that I was, from the circumstances well known to the committee, deprived of the opportunity of giving them personally any explanation. The report begins by stating the substance of Mr. Trotter's evidence respecting his advances to me: upon which it is necessary immediately to observe, that it is quite impossible to attempt, with precision, to analyse any of the statements given by Mr. Trotter.—None of the public accounts of the office ever were in my custody or possession, and from the day I transferred my balance to my successor, I considered my connexion with the navy pay office to have ceased, as much as if it never had existed; except in so far as respected a small balance to which I might finally be liable, on the settlement of my account as treasurer, previous to January 1786, as to which my account must be made up and cleared as an ex-treasurer, agreeably to the old practice of the office. I likewise took occasion to explain to the commissioners of naval inquiry, that for many years past I never had considered the vouchers of my settled accounts with Mr. Trotter, in the management of my private affairs, as being of the smallest use, and never thought of preserving them, more than I should have done the vouchers of any other settled account in which I was ever concerned. At the same time, I mentioned to them the information I had received from Mr. Trotter, as to the manner in which these accounts were blended, and which deprived me of the means of giving any detailed or satisfactory information on the subject.—I have shortly recapitulated these circumstances, in order that the House may feel the impossibility of my either confirming or correcting any of the details which Mr. Trotter has given to the committee. It is true, I have now had the opportunity of looking into Mr. Trotter's accounts with Messrs. Coutts, contained in the Appendix to the tenth report; but the bare inspection of them is sufficient to convince every person of the impossibility of deriving any information from them; and every endeavour to unravel them has more and more proved the impracticability of doing so.—In short, in the whole minute details connected with this investiga-



tion, I have been at the mercy of Mr. Trotter's memory and recollection, without the means or power of either aiding or correcting his recollection in any one item; but this I can affirm, that I am not indebted in one shilling either to Mr. Trotter or to the public. But upon any anterior details upon which Mr. Trotter may have entered, or may hereafter enter, for the reasons already assigned any distinct explanation from me must be obviously impossible.—Nothing can be further from my thoughts, than to insinuate any intention, on the part of Mr. Trotter, to state any thing differently from what his recollection may have suggested at the moment. At the same time, from the information he has given respecting his books, he has little else to resort to than his memory; and both himself and his friends know that neither he nor they have felt they could depend upon it for a very considerable time past, in the manner they might have done some years ago.—Under these circumstances, and speaking from recollection of transactions many years ago, it is not impossible or improbable, that in some of his details, Mr. Trotter may have intermixed the transactions of one person with those of another. I think I can perceive vestiges of the truth of this observation in his evidence, where he mentions the name of Mr. Tweedie. It is true, that in the close of his evidence he explains himself to mean no more than that he employed Mr. Tweedie as a messenger to me; but from the former part of his evidence any person would be led, and the committee seems in fact to have been led into a belief, that, in some shape or other, Mr. Tweedie was entrusted or employed by me in some way more confidential than as a mere messenger; whereas I have not the least recollection of any circumstance that could create such an impression in Mr. Trotter's mind, and am perfectly certain, that no confidential intercourse of any description, ever passed between Mr. Tweedie and myself. From what Mr. Trotter had said in his evidence, I observe that the committee have been induced to examine the son of Mr. Tweedie on the subject, and the import of his evidence is to confirm the statement I have now given.—Having observed thus much in general, I shall proceed to offer every satisfaction the nature of the case admits of, consistently with the reserve that naturally belongs to transactions connected with the government of the country. But I must, in the first place, remark, that during the whole period in which I was treasurer of the navy, I was, at the same time, the confidential adviser of government in every thing relating to the administration of the affairs of Scotland, or supposed to be connected with the general interests of government in that part of the kingdom. In that capacity, every person must readily perceive the impossibility of being so, without having recourse to the expenditure of occasional sums for the purposes of govern-

ment; and, however satisfied my own conviction may have been, and however clear the necessity and propriety of the expenditure, in the instances in which it occurred, might in fact have been, every one must be aware, that it is impossible that those purposes should be detailed, without both great public and personal inconvenience: and I do affirm in the most direct terms, that the 10,000*l.* which came into my hands during the paymastership of Mr. Douglas, was neither used, nor meant to be used, for any object of personal profit or emolument to me. But I think it is impossible for any one to expect, that I should enter into a more minute explanation, either with regard to that sum, or another, of, I believe, about a similar amount, at a later period, without incurring the charge of a great breach, as well of public duty as of private honour. It is unnecessary to dwell upon the uneasiness I have felt from the necessity of withholding explanation on any part of this subject, aware as I am of the many insidious and malignant observations, to which any person must be exposed, who feels such a reserve to be his only honourable line of conduct. There is, however, one striking circumstance in this business, on which I may fairly rest in appealing to the candour of the House. In my letter to the commissioners of naval inquiry, on the 30th of June last, though I referred to the whole, I certainly had particularly in contemplation the sum of 40,000*l.* advanced by me to Mr. Pitt, for the purposes explained in the report of the committee of the House of Commons. This sum formed two-thirds of the whole; and if Mr. Pitt had not thought it expedient, as appears at one time to have been his feeling, to divulge the transaction in the manner he has done, I should have thought it my duty never to make such a discovery, from any personal consideration either of fame or safety: and if this investigation had taken place within that period, it is obvious to what an extent of additional suspicion and obloquy I must have been exposed; and yet from the disclosure which has been made, it is now evident that such suspicions would have been groundless, and such obloquy unjust.—It will also be recollected, that with regard to the sum of 10,000*l.* put into my hands by Mr. Douglas, there is no room for charging me in that transaction with any violation of the act of parliament; for it took place before the act passed: and whatever restraint I might have been under from the terms of my patent, the regulations either as to placing money in the Bank, or drawing it from thence, as enacted by the act in 1785, in no respect applied to that ten thousand pounds.—The explanation I have now given, applies to twenty thousand pounds of the sum mentioned in the report, and with the addition of whatever sum Mr. Trotter was at any time in advance for me, in his account current, forms the aggregate of any advance he may have made to me, in so far as I can speak from the convic-



tion of my own mind. It is my belief, that there is some confusion in Mr. Trotter's recollection, when he talks of twenty-two thousand pounds, or twenty-three thousand pounds, as distinct from the advances of "from ten thousand pounds to twenty thousand pounds on his account current." Either the one or the other of these sums, I conceive, must be overstated. I am not aware from what materials Mr. Trotter can make several of the distinctions he has done in his evidence, respecting the different funds from which such advances were made. It is obvious, on the face of his evidence, that much of what he stated bears the character of after-recollection. A striking example of this appears on his second day's examination, when he desires to make an addition of two thousand pounds or three thousand pounds, to the sum of twenty thousand pounds, which he had stated in his examination on the preceding day. It is true, I have no materials or documents by which I can either assist or correct his recollection. I was perfectly aware, in my own mind, that I was accountable to the public for the re-payment of a sum to the amount of about twenty thousand pounds, drawn for confidential purposes, exclusive of the forty thousand pounds to be immediately mentioned: but Mr. Trotter was totally ignorant of those appropriations; and if he endeavours, from any thing recently avowed, to form a conjecture concerning them, I am sure it will only serve to mislead and confuse him.—It is now necessary to advert to a sum mentioned by Mr. Trotter as having been borrowed by my direction, and on my account. He states the sum to be twenty-two or twenty-three thousand pounds. This certainly differs from my recollection, which is clear as to the sum being twenty thousand pounds, and the annual interest paid on it one thousand pounds. If, therefore, the three thousand pounds in addition was any advance on my account, it must have been on his account current, or in some other mode, which it is impossible for me to trace. The loan took place a few years after I had unadvisedly left my profession, and was connected with some private family concerns, with which it is unnecessary to trouble the House. I observe from the report of the committee, that Mr. Trotter, whom I employed to borrow the money, says he was himself the lender; and, upon his authority, I presume he was so. I certainly had no knowledge of it at the time, having only directed him to procure the loan; and probably, from the question not being put to him, he has omitted to inform the committee, that the circumstance of his having been so was only communicated to me within these few weeks.—The next particular in the report to be observed upon, is the sum of 40,000*l.* advanced for the relief of Messrs. Boyd and Co.; and it seems to be taken for granted, that this transaction had been suggested by me. If I had been examined, I

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think there would have been found some shades of difference in my recollection of the origin of the transaction, from what appears upon the evidence reported. But feeling then, as I do now, the urgent necessity of it, it is immaterial to examine whence the suggestion arose. There seems no difference of recollection, however, as to the substance of the transaction, which is fully before you; and I have no disposition to exculpate myself from any part of the blame which can be supposed imputable to it.—Upon this part of the report it will be expected that I should advert to what is stated as to my not paying interest, when I repaid to Mr. Trotter the sums detailed in the report of the committee. I do not imagine it will be expected by the House, that I should give any reason why I did not either pay or demand interest on any part of the sums of forty and twenty thousand pounds withdrawn for other than naval purposes. Those sums would have yielded no interest if they had remained in the Bank; and it certainly never entered into my mind to conceive, that under the circumstances of the case, the public could look for interest upon money so applied. It has been already mentioned, that for the sum borrowed under my own authority, interest was regularly paid; and if I was, for years, in the practice of paying so large a sum annually as interest, it seems to afford a pretty strong presumption, that I was not in the habit of applying the public money imprested into my hands for the purpose of private emolument. In truth, if I were to enter into any detailed explanations of my own private concerns, I am afraid it would be found, that I had, at all times, too many proofs of that nature to which I could have recourse.—Any consideration of interest, therefore, can alone apply to the sums which Mr. Trotter was at any time in advance for me on my private account current with him. From the latitude of expression made use of by Mr. Trotter, in his original evidence, I find it has been inferred, that he was in the practice occasionally of making advances to me, to the extent of ten or twenty thousand pounds. Mr. Trotter could never mean to state, that at any time he had advanced to me a sum to that amount. He clearly could only mean to speak of the aggregate sum advanced on his account current with me, adding all the items together during the whole progress of the account, on which he plainly states that there was, at different times, a considerable balance in my favour, on which he did not pay any interest.—I have no materials, nor has Mr. Trotter confessedly any, by which he could make a statement on this subject, more accurately than he has hitherto done. But he has very recently communicated to me his belief, that the advance for me of one or two instalments on what is called the loyalty loan, was the only material advance to which he meant to allude: and, so far as I can form any judgment on the subject, I am inclined to think,



that his recollection does not much mislead him in this respect. When I subscribed ten thousand pounds to that loan, I certainly had not at my command the money wherewith to purchase the stock; but many who hear me will recollect, that it was expected of men in public situations that they should give countenance to it, and I accordingly did (as I believe many others did) give directions for subscribing to it, meaning to dispose of it as soon as I could. The late Mr. Henry Drummond arranged this for me; but I inadvertently omitting to make the transfer at the proper time, and the value of the stock having fallen, it remained upon my hands. To the best of my recollection I remitted the first instalment from money borrowed in Scotland. Mr. Trotter made provision for the remainder, whether by advance on his private account with me, or through the house of Messrs. Coutts, I do not precisely know: but this I certainly do know and affirm, that in this transaction I never had in contemplation the prospect of pecuniary emolument or advantage, nor indeed did I consider it as any part of my private property; but as soon as the last instalment was paid, I executed a power of attorney in favour of Messrs. Coutts, not only to receive the dividend upon it, but to dispose of the stock itself for the repayment of the purchase money, whenever it suited their convenience to do so.—The result of what I have stated is this, that if Mr. Trotter did advance any of the instalments upon the loyalty loan, beyond what he was enabled to do by my private funds passing through his hands, and at the same time carried the dividends to my credit in his account, I may have been a gainer, to the amount of the dividend which arose from what he advanced, above what he might have in his hands of my private funds. This would be the state of the case in the most exaggerated view that could be taken of it, even by the most hostile imagination. The whole dividends upon the stock, during the time it was held, did not, in all, amount to two thousand pounds; and I think I need not add more on this point, to prove how unwarranted all the exaggerations have been, which have been propagated on the subject of interest.—I must also further state, that to the best of my belief there passed through Mr. Trotter's hands, arising from my salary and other private funds, not less, and probably more than seventy thousand pounds during the fourteen years he served under me in the navy pay office. Nor can it be reasonably contended, that on an account of the fluctuating nature I have described, a minute calculation of interest on every sum paid on either side would have naturally occurred to the mind of any man. No circumstance ever arose between Mr. Trotter and myself to call my attention to the subject, and indeed, from the general impression I had of the amount of the sums paid or received on my account, the balance was too inconsiderable to make the

interest an object of importance.—The next point to be observed upon in the report of the committee is, what they state as their second head of inquiry, viz. the communication said to have been made to Mr. Pitt by Mr. Raikes. This is a conversation which is said to have taken place as far back as 1797; and certainly any recollection I have been able to revive on the subject, is rather derived from what Mr. Pitt has recently stated to me, than from any feeble traces of it which remained in my own mind. I can, therefore, in observing upon this subject, only state, that supposing Mr. Pitt to have represented to me the communication in the precise terms he received it (as to which I certainly cannot speak from any recollection of my own), I make no doubt I should have treated it as an idle rumour, conceiving that it originated in the permission I was aware I had given to Mr. Trotter to withdraw from the Bank, and place in the hands of Messrs. Coutts, the sums necessary in the regular course of the office, for payment of the small sums which are hourly called for, as well as to answer the claims of those who were possessed of assignments from the competent boards, consistent with my idea of the meaning of the act of parliament which I have already detailed at length. It was under this impression I should naturally have so answered Mr. Pitt's communication, and this would so satisfactorily have accounted to me for the report, that I should not have thought of making any farther inquiries on the subject.—The third head of inquiry referred to the committee, respects the loss sustained through Mr. Jellicoe. Being obliged to trouble the House so long on other points, it is certainly not my intention to detain you on this: and however ruinous to me it would have been if the loss had fallen upon me, I own it is the point of all others, on which my mind has been least anxious in the course of all these investigations. My fame, not my fortune, is the object of consideration with me. I have appeared before this House to vindicate the former; and as to the latter, the evidence is in your hands, and upon that you will form your opinion. When it is so clearly established, that the loss had occurred previous to my having any connexion with the treasurership of the navy, and that by no means in my power the loss could have been prevented or diminished, I should feel myself most grievously injured, if his majesty had not been advised to give me the relief I received. I am strongly impressed with a conviction, that if Mr. Jellicoe had lived, and had been in a situation to establish his beneficial interest in the invention for which the patent was granted, the public would, from its value, have been glad to have purchased the patent, at a higher price than the loss which has been sustained by his failure: and if I am right in that impression, it is a consolation at least to feel, that the public enjoys the benefit of the invention, as I understand it is in general use,



without any compensation, except in so far as the loss in question can be considered as such.—Before concluding my observations on the report of your committee, it is necessary to advert to a circumstance not particularly dwelt upon by the committee, but which, from the tendency of some libellous publications that have been shown to me, seems to be enlarged upon with great assiduity, as affording grounds of dark and mysterious suspicion. I allude to the clause in the release produced by Mr. Trotter, relative to the destroying the vouchers of all pecuniary transactions between him and me. I have likewise heard, that the terms of this clause have even operated on the minds of candid and honourable men; and therefore I should be wanting in justice to myself and respect to them, if I were to pass it over without particular observation: and I am confident, whether you examine this charge upon the only evidence before you, or upon the glaring absurdity of the imputation itself, you will be convinced how perfectly groundless and injurious it is.—Let us first examine the evidence upon the subject, and it must immediately occur to your observation, that I was at the distance of four hundred miles when this release was prepared and transmitted to me for signature. I have no recollection whether it was brought to me by any man of business, or was transmitted in a blank cover to me from London. I think this last most probable, as it appears that I received it at my son's house in the country, and the witnesses who attest my signature are two of my servants. I am confident there was nothing to call my particular attention to this clause; and if there had, it does not occur to me now, that it would have struck me as any thing unusual, or meaning more than a clause of common form, expressive of an obligation on the parties not to keep in their possession any receipts, or other vouchers, which could be made the ground of a claim by the heirs of either party against the other. I do not, however, enlarge upon this observation; the fact certainly being, that the clause made no impression upon me of any kind, nor had I a recollection of its existence, till it was mentioned to me by a near relation of my own, who now hears me, and this after Mr. Trotter had been called before your committee.—The next remark on the evidence is, the almost certainty it affords, that I was never consulted on the insertion of such a clause, nor in a situation to be so. I have already informed you, that I was at the distance of four hundred miles from London, where the deed was prepared; and in addition to this circumstance, you have the most positive testimony from Mr. Trotter, that I was neither consulted, nor did I give any instructions upon it. He is asked expressly, “Did lord Melville give you any instructions for inserting the clause to destroy vouchers in the release before it was drawn up?”—He answers, “He did not.”—“Did you know of his having

given such instructions to any other person?” “I do not.”—So stands Mr. Trotter's evidence, every word of which you must believe to be a falsehood, before you can give the smallest credit to the imputation of any such concert or conspiracy as has been surmised. The evidence does not rest here; for, in so far as negative evidence can go upon such a point, it is as strong as it can be in any case. Mr. Spottiswoode having unfortunately died within these few months, we are deprived of the benefit of his evidence; but you have that of his partner and of his son: and if I had given any special directions to Mr. Spottiswoode respecting this clause, it is most probable that those gentlemen would have known it from my correspondence, or learnt it from their conversations with Mr. Spottiswoode at the time. If, therefore, you are to proceed on the only evidence before you on this subject, it is impossible for you to believe the foul suspicions which are endeavoured to be reared upon this circumstance. But I maintain, farther, the whole charge is not more defective in point of evidence, than it is palpably absurd on the face of it. If it means any thing, it must mean that Mr. Trotter and I, being conscious of some foul transactions, had resolved to destroy the evidence of them. Allowing the premises, the conclusion is a fair one; but the mode of executing that intention would have been the most extraordinary that ever was imagined. If Mr. Trotter and myself had formed the plan of destroying such evidence, what prevented our meeting together any day we pleased, and actually carrying our purpose into execution? But it would have been a most extraordinary proceeding, not only to have informed Mr. Spottiswoode and his partners and clerks of our intention, but to have recorded that intention in a formal deed, unnecessarily and wantonly confessing our own guilt, and publishing to every person who saw the deed, the means we had taken to cover it. This observation acquires much additional force, when it is remarked, that the deed contains a clause of registration; and if either of the parties should ever have occasion to have recourse to it as an obligation against the other, it was necessary it should be recorded in the supreme court of the kingdom, and an extract of the deed, containing the clause itself, produced in the court, before which any suit might be brought, for enforcing the obligation it is supposed to contain. If, after combining all these particulars, whether arising out of the positive and negative evidence which is before you, or from a contemplation of the manifest absurdities in which the charge is involved, any person can still allow himself, for one moment, to harbour such a suspicion in his mind, I must confess myself totally unable to combat the malignity and prejudices of a mind so deeply tainted. But in order that no circumstance may be omitted which can give a shadow of truth to this supposed conspiracy, we are desired to attend to the cir-



cumstance of its bearing date soon after the commissioners of naval inquiry were appointed. But those who attend to this remark will immediately perceive, that it is liable to every observation on the absurdity of it which has been already adverted to. If the parties concerned were panic-struck by a dread of the commissioners of naval inquiry, was it not more natural for them to have had immediate recourse to the destruction of these dangerous documents of guilt, instead of entering into an obligation on the subject, liable to all objections and difficulties which have been pointed out? They surely had no ground to imagine, that this release would not be produced, as well as the documents meant to be destroyed; and I certainly, without any breach of charity, may be permitted to suppose, that not one of the vouchers meant to be destroyed could have been dwelt upon with more ingenuity and asperity than this release, which the parties are said to have framed, for the purpose of covering all the guilt which it is supposed those vouchers would have proved.—I shall only further observe, that if this deed was meant to impose any active obligation upon me, I have certainly been very remiss in the performance of it. On my leaving Somerset Place I destroyed many useless papers. I did the same when I left Wimbledon three years ago. I likewise did so when I left London two years after, and I have occasionally done the same during my subsequent residence in Scotland; but I cannot charge my memory with having ever destroyed any voucher, from a sense of the obligation contained in this release. As to the act of parliament appointing the commissioners of naval inquiry, I believe nobody imagined that any thing but the abuses in the dockyards were the real object of their appointment. The abuse now complained of in the practice of the navy pay-office had been rectified before the bill passed; and I could not suppose it was intended to remedy abuses which had been already corrected. At the time I was applied to for the release I was living comfortably and happily with my family and amongst my friends in Scotland, not conceiving that I ever should be the object of attack as treasurer of the navy; and perhaps I am not very far mistaken in thinking, that if I had continued in that secession from public situation, the attack would never have been directed against me. I am ashamed to have troubled the House at so great a length on this part of the evidence subjoined to the report, but for the reasons I began by stating, I thought it impossible for me to avoid it; and I have only further to observe, that there is not one word in the release of any intention or obligation to destroy existing books or accounts. I am led to make this remark, from observing in some of the proceedings before the committee, an inclination to connect with the release the non-existence of some of Mr.

Trotter's books and accounts. I have now finished the observations which I have been desirous of laying before the House; and in the course of them, I trust I have been successful in my resolution of refraining from any asperity of language, expressive of the feelings I may be supposed to possess on the subject of the proceedings which have been directed against me for these many months past. If I ever give vent to any such feelings, it will not be in this place. This is not such a conclusion as I had hoped for, and as I think I had a right to expect to a long and laborious life, devoted to the service of my country; but I feel within myself a strength and fortitude of mind adequate to every suffering I have undergone, or by which I may still be harassed. My enemies are mistaken, if they suppose that my spirits are easily to be broken down by any exertions in their power; but I wish I could, with equal truth, assure them, that I was as unassailable in other quarters; the lashes intended for me have indeed cruelly lacerated the feelings of many valuable friends, and of others more nearly and dearly connected with me, and perhaps these strokes are the harder, as some of them have come from hands whence they were least expected. I shall, however, avoid dwelling on such topics, and thank the House for the indulgence they have at present shewn to me. Neither shall I trouble you much on the motion I have heard to be intended after I retire. As no such motion has yet been made, I am at liberty to speak freely of it, and I think my understanding is not so blinded on the subject, as to mislead my judgment with regard to the very extraordinary circumstances under which such a motion would now be brought forward. If an impeachment had been proposed on the 8th of April last, it would, at least, have come as an entire question, when no part of the punishment would have preceded the trial. I know I may be told, that being removed from a high and important trust, and separated by the interposition of parliament from the councils of my sovereign, is no punishment. I will not stop to discuss such puerilities; but I shall beg only to ask, whether what has already taken place does not probably amount to as much, as even in the case of a conviction upon an impeachment would have taken place? A declaration of incapacity to serve his majesty in any place of confidence or trust, would, even under such circumstances, have been considered as a punishment not wanting in due severity. The House of Commons have not done this in terms, but they have done it in substance from what passed on the 8th of April and subsequent occasions.—You have gone further. To punishment you have added an attack upon the remains of my private fortune, by your direction to the attorney-general. It may be said, this is only reclaiming unlawful gains. Is that so clear a case? and does it not admit of some doubt, whether claims upon



me would be confined solely to what I have received? But in any view, is it no additional punishment to be harassed, God knows how long, in a court of law, by an investigation of my whole private concerns for a great part of my life, without any documents or vouchers of any kind to aid my recollection in any one particular?—Indeed, when I take a review of these past proceedings, I can scarcely bring myself to believe that a motion of impeachment can be seriously intended. If any such intention has been entertained, it must have been conceived in a moment of sudden violence, forgetting all that has been already said or done upon this subject. Is it meant that a civil prosecution, under the direction of the attorney-general, is to be going on in one place, where I am to be examined upon oath, and the result of that examination communicated to the managers of the impeachment, to aid them, in their conduct of their criminal accusation in another place?—I am confirmed in my conviction, that an impeachment can never be seriously intended or persevered in, from attending to other circumstances, and in particular to that of the many illustrious names, members of another House of Parliament, which have been prefixed to requisitions for calling meetings, or have actually attended them in various parts of the country, expressing very violent and inflammatory opinions, founded on what they supposed to be the import of the resolutions passed by the House of Commons. In the case of an impeachment, these peers would be the judges of the person chiefly aimed at in those extrajudicial proceedings. It will scarcely be supposed, that no communications on this subject have passed between the great authorities in this House, who have taken a lead in its proceedings, and many of those noble lords to whom I have referred, and it is altogether inconsistent with a belief of such communications, to suppose that a motion of impeachment could be intended; for it appears incredible, that under such circumstances, those high and honourable characters could have been induced to take a part so totally irreconcilable with the judicial functions they might be called upon to perform. I believe I am accurate in the recollection of a circumstance which just occurs to me. It was on the occasion of the trials a few years ago at Maidstone, the circumstances of which will be easily recollected. A gentleman of the name of Raikes was challenged as a jurymen, and the challenge sustained, on account of his having been heard to utter intemperate language with regard to the objects of the trials; and this was considered as sufficient to disqualify him from sitting as a jurymen upon their trial. It has been rumoured, that other modes of trial have been thought of, in the shape of indictment. But on that subject, likewise, I am disposed to be incredulous: for I am sure, if any such measure had been in contemplation, no member of parliament would have been induced to

take part in the harangues and resolutions of meetings of every description, and even in this metropolis, calculated to poison the public feelings, and prejudice the minds of those from whom the jurymen must be selected, if such criminal prosecution were to take place.—Upon this subject of prosecution by indictment, I must repeat the same observation I have already made on that of impeachment. It would be an attempt at double punishment. Fine or imprisonment are the usual modes of punishment in the case of a conviction on an indictment in a court of law; but is there any man, circumstanced as I have been in life, who would ever consider what has happened in consequence of the interposition of parliament, as a lesser punishment than that which I have stated as the usual result of a criminal conviction? This proposition may be distorted by any subterfuge which ingenuity may devise; but it is impossible seriously to maintain, that an attack upon me, in the form of a criminal prosecution, would not be an attempt to load me with reiterated punishment, and that, too, aggravated by the methods which have been already resorted to, for the purpose of poisoning and prejudicing the public mind.—These impressions are so strong and so convincing to my mind, that I feel secure no further proceedings will be taken against me, and therefore I should think myself guilty of an unnecessary waste of your time, if I were to insist upon them more at large. Perhaps I ought to be aware, that in cases of persons of rank, and who have filled high situations in government, their accusers may think themselves at liberty to pursue lines of conduct, which would be reckoned reprehensible and oppressive, if adopted in the case of a cottager or a peasant: but even that has its bounds, and there are certain fixed and unalterable principles, which cannot be departed from, in any case, without weakening in the minds of all ranks, that confidence in the pure administration of justice, which is essential to the happiness and safety of every inhabitant of a free country. I have already expressed my hopes, that nothing in the course of this day has fallen from me, in any degree disrespectful to the assembly which, with their indulgence, I have been permitted to address. But I equally trust, I cannot be liable to censure, if I have not, in any part of what I have said, shown a disposition to deprecate, by humiliating submission, any of the future evils which may be in contemplation against me. I have lived too long not to know, that popular clamour often dies away as rapidly as it is excited. A time may come, and I hope it is not far distant, when those who now pursue my conduct with such unexampled rigour, will perceive their error, and become conscious of the injustice I have suffered through misconception and misrepresentation. Circumstances not in my power with honour to control, debar me from the possibility of uttering what it would be un-



doubtedly my personal interest to disclose. I despair not even in my own time, to receive ample justice from my deluded country. This is, however, not the period to enter upon that theme. But I feel the consciousness of my own rectitude deeply implanted in my breast, and I shall descend to my grave with the heartfelt satisfaction, that however the shafts of severity and cruelty may be levelled against me at the present moment, the future impartial historian will be able to hand down my name, in the list of those who have strenuously, and I hope not ineffectually, exerted, during a long life of public service, their unremitting endeavours to promote the welfare and the dearest and most essential interests of their country.—His lordship then withdrew.

Mr. Whitbread then moved,\* “That Henry lord viscount Melville be impeached of high Crimes and Misdemeanors.”

Mr. Nat. Bond moved as an amendment, “That his majesty’s attorney-general be directed to prosecute Henry lord viscount Melville for the several offences which appear, from the report of the commissioners of naval inquiry and that of the select committee of the House of Commons, to have been committed by the said Henry lord viscount Melville; and that the attorney-general be directed to stay proceedings in the civil suit, instituted by order of the House, against the said Henry lord viscount Melville.”

On the motion of the *Chancellor of the Exchequer*, the debate was, at three o’clock in the morning of Wednesday the 12th, adjourned.

The debate was resumed on Wednesday, and lasted until six o’clock the following morning (the 13th). The House then divided on the original motion:

|                          |     |
|--------------------------|-----|
| For the Impeachment..... | 195 |
| Against it .....         | 272 |

|                                  |    |
|----------------------------------|----|
| Majority against the Impeachment | 77 |
|----------------------------------|----|

This motion being therefore lost, the House again divided on Mr. Bond’s amendment for a criminal prosecution by the attorney-general. The numbers on this division were:

\* The very interesting and important debate which this motion occasioned, is correctly reported in the fifth Volume of Hansard’s Parliamentary Debates, pp. 289, 329, to which publication the Reader is therefore referred.

|                             |     |
|-----------------------------|-----|
| For Mr. Bond’s motion ..... | 238 |
| Against it .....            | 229 |

|                              |    |
|------------------------------|----|
| Majority for the motion..... | 9* |
|------------------------------|----|

On Tuesday, June 25, Mr. *Leycester* moved, “That the House proceed by impeachment against Henry lord viscount Melville for the several offences which appear, from the said reports, to have been committed by the said Henry lord viscount Melville; and that the attorney-general be directed to stay proceedings in the prosecution which he was directed by an order of this House, 13th June, to institute against him.”†

Mr. C. W. Wynn moved, that this debate be adjourned until Monday next; which motion was not seconded. After some debate,

Mr. Fox moved, “That the other orders of the day be now read;” on which motion the House divided:

|                                                       |     |
|-------------------------------------------------------|-----|
| For proceeding with the other orders of the day ..... | 143 |
| Noes .....                                            | 166 |

|                                   |    |
|-----------------------------------|----|
| Majority against Mr. Fox’s motion | 23 |
|-----------------------------------|----|

The question for the impeachment was then carried without a division. After which it was ordered, “That Mr. Whitbread do go to the Lords; and at their bar, in the name of the House of Commons, and of all the Commons of the United Kingdom of Great Britain and Ireland, impeach Henry lord viscount Melville of high crimes and misdemeanors; and acquaint them, that this House will, in due time, exhibit particular articles against him, and make good the same.”‡

\* See in 5 Hans. Parl. Deb. 484, a short but animated discussion as to the mode of proceeding on Mr. Bond’s resolution.

† The debate on this motion is reported at large in 5 Hans. Parl. Deb. 568.

‡ In this introductory note, I have confined myself to a narrative of the proceedings in parliament which terminated in the impeachment of lord Melville. To have given even a mere abstract of the many important debates which took place in the House of Commons on these proceedings would have extended this trial to a most inconvenient length. I have therefore referred the reader to the very accurate reports contained in the fourth and fifth Volumes of Hansard’s Parliamentary Debates, instead of printing an imperfect abridgment of them in the text.

### *Proceedings on the Impeachment of Lord Viscount Melville preliminary to the Trial.*

House of Lords, Wednesday, June 26, 1805.

A message being announced from the House of Commons, Mr. Whitbread introduced by

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the Black Rod, advanced to the bar, attended by Mr. Grey, lord Temple, lord H. Petty, Mr. Fox, Mr. Windham, Mr. H. Combe, sir R.

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Buxton, Mr. Shaw Lefevre, Mr. Creevey, Mr. Wilberforce, Mr. R. Thornton, Mr. Pelham, lord A. Hamilton, Mr. Curwen, Mr. Wm. Elliot, Mr. Bankes, sir W. W. Wynn, Mr. C. W. Wynn, Mr. Plumer, Mr. St. John, Mr. James Martin, Mr. Tierney, Mr. G. Johnstone, Mr. P. Moore, sir W. Elford, sir W. Burroughs, lord Marsham, and others. As soon as Mr. Whitbread reached the bar, he read the following message from the Commons, and delivered it into the hands of the lord chancellor: "My lords, in the name of the Commons of the United Kingdom of Great Britain and Ireland in parliament assembled, I am commanded to impeach Henry lord viscount Melville of high crimes and misdemeanors. And I do hereby, in their name, and in the name and behalf of all the Commons of Great Britain and Ireland, impeach the said Henry lord viscount Melville of high crimes and misdemeanors. And, I am further commanded to acquaint your lordships, that the House of Commons will, in due time, exhibit particular articles of impeachment against the said Henry lord viscount Melville, and make good the same."—The members of the House of Commons then withdrew. The message was read by the lord chancellor, and deposited on the table.

*House of Commons, Wednesday, June 26, 1805.*

On his return from the House of Lords, Mr. Whitbread acquainted this House, from the bar, that pursuant to the order of the House, he had gone to the bar of the House of Lords, and impeached Henry lord viscount Melville, of high crimes and misdemeanors; and had also acquainted their lordships, that this House would, in due time, exhibit particular articles of impeachment against his lordship, and make good the same. Mr. Whitbread then moved, that a committee be appointed to prepare articles of impeachment against Henry lord viscount Melville, which was ordered—On the motion of lord Temple, Mr. Whitbread was appointed one of the members of the committee; and on the motion of Mr. Whitbread, the following members were also appointed to the committee: viz. Mr. Fox, Mr. Grey, Mr. Sheridan, lord Henry Petty, lord Marsham, Mr. Giles, lord Folkstone, Mr. Raine, Dr. Lawrence, Mr. Creevey, Mr. Holland, Mr. Calcraft, Mr. Kinnaird, lord Porchester, lord Archibald Hamilton, Mr. C. Wynn, Mr. Jekyll, Mr. Morris, and lord Temple.—Mr. Whitbread then moved, that the tenth report of the commissioners of naval inquiry, and the report of the select committee on said report, be referred to said committee, which was ordered. It was also ordered on the motion of Mr. Whitbread, that five of the committee be a quorum; that the committee do meet at 10 o'clock to-morrow in the Speaker's chamber; that they have power to send for persons, papers, and records; that they have power to adjourn from time to time and from place to place, and report

from time to time, as it shall appear to them, to the House; and that they shall have power to sit during the sitting of parliament, notwithstanding any adjournment of the House.

*House of Commons, Thursday, June 27.*

On the motion of Mr. Whitbread, Mr. Sergeant Best was ordered to be added to the committee, to whom was entrusted the drawing up of the articles of impeachment against lord Melville.

*House of Commons, Monday, July 1.*

Mr. Whitbread moved, "That a committee be appointed to examine the Lords' Journals respecting the reports of the commissioners of public accounts and their proceedings thereon, and that the committee appointed to draw up articles of impeachment against Henry lord viscount Melville be the said committee."—Ordered.

*House of Commons, Thursday, July 4.*

Mr. Whitbread\* brought up the report of the committee appointed to inspect the Lords' Journals in respect to their proceedings on the charges adduced against lord viscount Melville; which was ordered to lie on the table.—The hon. gentleman next brought up the report of the committee appointed to draw up the articles of impeachment voted by the House against lord viscount Melville; which being shortly read, *pro forma*, he then moved, in the first place, "that the report do lie on the table, and be printed for the use of the House;" which being agreed to, he moved, in order to give gentlemen time to examine the articles of charge after their being printed, "that the report be taken into consideration on Monday next."—Ordered.†

*House of Commons, Monday, July 8.*

Mr. Whitbread presented an additional article of impeachment, which article was read and agreed to: "That, after the said 10th day of September, 1796, when lord Melville was treasurer of the navy, the said Mr. Trotter did, with his lordship's connivance or authority, place large sums of money in the hands of Mr. Mark Sprot, after taking such sums out of the Bank of England for the purpose of private emolument and interest, or for purposes other than naval purposes." The above article was read, agreed to, and added to the others, and the whole ordered to be engrossed.

Mr. Whitbread then moved, that a clause be ordered to be prepared for the purpose of reserving to the House of Commons the liberty of exhibiting any other articles against lord Melville that may afterwards occur to them to be necessary, and that the

\* *Vide 5 Hans. Parl. Deb. 737.*

† This report contained only eight of the articles of impeachment.



committee already appointed to prepare the impeachment be allowed to prepare the said clause; which was agreed to.—The hon. gentleman then brought up the report of the said committee, relative to said saving clause.—Their resolution was read, and agreed to, and the clause ordered to be added to the other articles.

*House of Commons, Tuesday, July 9.*

Mr. Whitbread moved, that the engrossed articles of impeachment against Henry lord viscount Melville, be read; which were read accordingly; on which the hon. member moved that they be carried to the Lords.—Ordered.

It was then ordered, on the motion of earl Temple, that Mr. Whitbread do carry the articles to the Lords, which he instantly did, accompanied by many members; and on his return acquainted the House from the bar, that he had delivered the articles of impeachment, pursuant to the order of the House, at the bar of the House of Lords.

On the same day a motion was made “for leave to bring in a bill to provide, that the proceedings now pending before parliament for the impeachment of Henry lord viscount Melville shall not be discontinued notwithstanding any prorogation or dissolution of parliament.”—The motion was agreed to, and the committee of impeachment ordered to prepare and bring in the bill.

The bill (having undergone some modifications) passed the Commons on the 10th and the Lords on the 11th of July: it received the royal assent on the 12th, on which day the parliament was prorogued.

*House of Lords, Tuesday, July 9.*

Mr. Whitbread, accompanied by a great number of the members of the House of Commons, exhibited at the bar articles of impeachment in the name of all the Commons of the United Kingdom of Great Britain and Ireland, against Henry lord viscount Melville, impeached of high crimes and misdemeanors. The members of the House of Commons having withdrawn, the articles were read at the table by the clerk.

Lord Hawkesbury then moved, that a committee should be appointed to search the Journals for precedents of their lordships proceedings in cases of impeachment.—Ordered; and that all the Lords present be of the same committee. His lordship next moved, that a copy of the said articles be granted to Henry lord viscount Melville within one month; and that the said Henry lord viscount Melville should put in his answer on the second day of the next session of parliament.—Ordered.

*House of Lords, Wednesday, January 22, 1806.*

Lord Melville, (in pursuance of the order of last session, respecting the delivery of his answer to the articles of impeachment exhibited

against him by the Commons, on the second day of this session), entered the House, and presented his answer at the table, which was forthwith read by the clerk.\*

A copy of the said answer was, on the motion of lord Walsingham, ordered to be communicated by message to the Commons; and also that a sufficient number of copies be printed for the use of their lordships. It was also ordered, that Messrs. Plumer, Adam, and Hobhouse, be assigned as counsel to lord Melville, for conducting his defence. A committee was likewise, on the motion of lord Walsingham, appointed to inquire into and report precedents of cases of impeachments for crimes and misdemeanors.

*House of Commons, Wednesday, January 22.*

Mr. Whitbread moved, that the resolution of the House, respecting the appointment of a committee of impeachment against lord Melville, of the 26th of June, 1805, and also the act of last session, for continuing the proceedings respecting that impeachment, notwithstanding any prorogation or dissolution of parliament, be read. The resolution and the act having been accordingly read, the hon. gentleman then moved, that the said committee do sit and proceed with the matters referred to them to-morrow morning, and that lord Robert Spencer be added to the said committee.—Ordered.

*House of Commons, Friday, January 24.*

A message from the Lords presented a copy of the answer delivered in by lord Melville to certain articles of impeachment preferred against him by the House of Commons. The answer was read from the chair, and on the motion of Mr. Whitbread it was ordered that it be referred to the committee for drawing up the impeachment; and that they do report their opinion on the same towards the further proceedings to be had in the impeachment.

*House of Commons, Thursday, February 13.*

On the motion of Mr. Creevey, the name of lord Henry Petty was added to the committee for managing the impeachment against lord viscount Melville.

*House of Commons, Monday, February 24.*

On the motion of Mr. Whitbread, earl Temple, lord R. Spencer, and Mr. Calcraft were added to the committee appointed to prepare articles of impeachment against lord viscount Melville.

*House of Commons, Monday, March 3.*

Mr. Whitbread, by desire of the committee of which he had been appointed chairman, gave notice that he should to-morrow make

\* The answer is printed, together with the articles of impeachment, at the beginning of the trial, *infra*.



a special communication to the House on the subject of the impeachment of lord Melville.

*House of Commons, Tuesday, March 4.*

Mr. Whitbread, from the committee appointed to draw up articles of impeachment against Henry lord viscount Melville, informed the House, that further matters had come to the knowledge of the said committee, in the course of the examinations taken before them, with respect to the conduct of the said lord viscount Melville, during the time that he held the office of treasurer of his majesty's navy; which information the committee think it of importance to communicate to the House, if the House should please to receive the same. It was thereupon ordered, "That the said committee have leave to report such further matters as shall have come to their knowledge in the course of the examinations taken before them with respect to the conduct of the said lord viscount Melville, during the time that he held the office of treasurer of his majesty's navy." Mr. Whitbread accordingly reported from the said committee such further matters as they appeared to them; and he read the report in his place, and afterwards delivered the same, together with an Appendix thereunto, in at the table, where the report was read. It was also ordered, that the said report be taken into further consideration upon Friday next, and be printed for the members of the House.\*

*House of Commons, Friday, March 7.†*

Mr. Whitbread moved the order of the day for the House taking into consideration the report from the committee appointed to draw up articles of impeachment against lord Melville. He then moved, "that the committee which was appointed to draw up articles of impeachment against Henry lord viscount Melville do prepare a new article of impeachment on the matter contained in their last report, and report the same to the House."—Ordered.—After the lapse of a few minutes, Mr. Whitbread brought up a report from the committee containing an additional article‡ (the tenth). It was then, on the motion of Mr. Whitbread, ordered that the article be taken into consideration on Monday next.

*House of Commons, Monday, March 10.*

On the motion of Mr. Whitbread, the order of the day for taking into further consideration the report of the committee appointed to prepare another article of impeachment against lord Melville was read. He then moved, that the said article be one other of the articles of impeachment against lord viscount Melville. Ordered.—On the motion of Mr. Whitbread,

\* A copy of the Report will be found in the Appendix to the trial, *infra*.

† *Vide* 6 Hans. Parl. Deb. 364.

‡ See it, with the others, at the beginning of the trial, *infra*.

it was also ordered, that a clause be prepared, saving liberty to the Commons to prefer any other articles of impeachment against lord viscount Melville, and that he be put to answer the same; and that the committee appointed to draw up the articles of impeachment, be appointed to draw up the said clause. The hon. gentleman immediately brought up a report from the committee, containing the above clause, which was read, agreed to, and ordered to be engrossed, with the article of impeachment.

*House of Lords, Monday, March 10.*

Mr. Whitbread, accompanied by several members of the Commons, presented at the bar, in the name of the Commons of the United Kingdom, the farther article of impeachment against lord Melville. The article was read at the table; after which lord Auckland moved that it be referred to the committee appointed to search for precedents of the proceedings of that House on cases of impeachment. Ordered.

*House of Lords, Wednesday, March 12.*

Lord Walsingham presented the report of the committee appointed to search for precedents of the proceedings of the House in cases of impeachment; which was ordered to be printed. A short conversation ensued between lords Auckland and Eldon, respecting the additional article of impeachment against lord Melville, as to the manner in which that noble lord should be called upon to answer; which ended in an order to summon their lordships for to-morrow, in order to take the same into consideration.

*House of Lords, Thursday, March 13.*

On the motion of lord Auckland,\* it was ordered, that a copy of the farther article of impeachment be communicated to lord Melville, and that he do put in his answer to the same on to-morrow fortnight. The farther article was also ordered to be printed.

*House of Lords, Monday, March 24.*

Lord Melville attended in his place, and delivered in his answer to the 10th article of impeachment. His lordship entered his protest against the unprecedented circumstances under which that additional article had been preferred; and declared that he did not think himself bound, either by the law or usage of parliament, to answer it. He should, however, plead Not Guilty to the charge generally.—The answer was then ordered to be sent to the Commons.

*House of Commons, Monday, March 24.*

A message from the Lords communicated to the House the answer of lord Melville to

\* See the short speech with which he introduced this motion in 6 Hans. Parl. Deb. 426.



a farther article of impeachment, being the 10th, exhibited against him by the Commons of the United Kingdom. On the motion of Mr. Whitbread the answer was read. The answer was then, on the motion of Mr. Whitbread, referred to the committee of impeachment, to consider thereof, and to report their opinion thereon to the House what was most proper to be done in order to further proceedings.

Mr. Whitbread then withdrew to the bar, and brought up the report of the committee on the answer of lord Melville in the form of a replication, averring that lord Melville was guilty of the crimes and misdemeanors charged upon him by that House, on behalf of themselves and of all the Commons of the United Kingdom, which they were ready to prove. The replication was agreed to, ordered to be engrossed, and then to be carried by Mr. Whitbread to the Lords, as the replication of the Commons. Mr. Whitbread then gave notice, that at a proper time he should move, that the House do attend the trial as a committee of the whole House.\*

*House of Lords, Tuesday, March 25.*

Mr. Whitbread, and several other members of the Commons, presented at the bar, in the name of the Commons of the United Kingdom, a replication to the answer of Henry lord Melville, declaring that the said lord Melville is guilty of the high crimes and misdemeanors charged against him in the articles of impeachment, and that the Commons are ready to prove the same. The replication having been read at the table, earl Fitzwilliam moved, that a day be appointed for the trial of Henry lord Melville; that the trial of the said lord Melville take place at the bar of the House on the 29th of April next, at eleven in the forenoon; and that a message be sent to the Commons to acquaint them therewith, and require them to appoint a committee to manage the impeachment; all which motions were agreed to, after a few words from the earl of Radnor respecting a point of form.

*House of Commons, Tuesday, March 25.*

Mr. Whitbread reported that he had presented, in the House of Lords, the replication of the Commons to the answer delivered in by lord Melville to the last article of impeachment.

A message from the Lords stated, that their lordships had appointed Tuesday, the 29th of April, for the trial of lord viscount Melville, at the bar of their own House, and that arrangements would be made at the said bar for the convenience of the managers of the impeachment, &c. On the motion of Mr. Whitbread it was ordered, that managers should be

appointed; and that those managers should consist of the committee appointed to prepare the articles of impeachment. Also that Joseph Kaye and John Winter, esqrs. should be appointed solicitors for the conduct of the said impeachment. Mr. Whitbread postponed till to-morrow his notice of a motion for the attendance of a committee of the whole House, upon the trial of lord Melville, in order to convenience an hon. gentleman (Mr. Saunders Dundas) who was particularly interested in this question, and who could not attend on this day.

*House of Commons, Wednesday, March 26.*

Mr. Whitbread moved, that the House be present at the trial of lord viscount Melville, as a committee of the whole House; which, after debate,\* was agreed to, and a message ordered to communicate the same to the lords.

*House of Lords, Thursday, March 27.*

Mr. Whitbread, and several other members of the House of Commons, brought up a message, purporting that the House would attend the trial of lord viscount Melville, in a committee of the whole House, and requiring accommodation to be provided for them.

On the motion of lord Grenville,† an address was ordered to be presented to his majesty, praying that he would be graciously pleased to give directions to prepare a place in Westminster-hall for the trial of lord viscount Melville.

On the same day Mr. Whitbread reported to the Commons, his having presented their message to the Lords.

*House of Lords, Monday, April 14.*

Lord Grenville moved, that the committee appointed to search the Journals for precedents of proceedings in cases of impeachment, be instructed to consider of the best mode of proceeding on the trial of lord viscount Melville, and do report thereon. Ordered.

*House of Lords, Wednesday, April 16.*

Lord Grenville moved, that a message be sent to the Commons, informing them that his majesty had been graciously pleased, in pursuance of an address of that House, to give directions for fitting up a place in Westminster-hall proper for the trial of lord viscount Melville. Ordered.

*House of Lords, Friday, April 18.*

Mr. Giles, and several other members of the Commons, brought up a message, containing a list of witnesses to be produced in the trial of lord Melville, and requesting that their lordships would take measures to summon such witnesses to attend on the 29th inst. and to bring with them such books, papers,

\* The answer and replication will be found, with the other articles in the first day's proceedings, in the trial *infra*.

\* *Vide* 6 Hans. Parl. Deb. 540.

† *Vide* 6 Hans. Parl. Deb. 557.



and documents, as were marked against their respective names.—On the motion of lord Walsingham, a message was ordered to be sent to the Commons, containing a compliance with the above request. Lord Walsingham also moved, that Mr. Wyatt should attend the House on Monday, to state what progress had been made in the preparations for the trial of lord Melville, and when the fitting up of the court was likely to be finished. Ordered.—It was likewise ordered, that the lord chancellor should send letters to the peers of the blood royal, informing them of the day fixed for the trial of lord Melville, and requesting their attendance.

*House of Lords, Monday, April 21.*

Mr. Wyatt, surveyor-general of his majesty's works, appeared at the bar, and, in answer to the questions put to him by the lord chancellor, respecting the time when the preparations in Westminster-hall, for the court of parliament, sitting on the trial of lord Melville, would be completed; informed their lordships, that the same would be completely finished on Saturday next.—Mr. Whitbread presented a list of the names of certain additional witnesses, who were deemed necessary by the Commons to be examined on the trial of lord Melville, and requested their lordships would issue summonses for their attendance on Tuesday the 29th inst. After the messengers had withdrawn, their lordships ordered that a message be sent to the Commons, acquainting them, that their lordships would take the necessary steps to provide for the attendance of the witnesses mentioned.

Lord Walsingham read the report of the committee, to whom it was referred to search for precedents respecting their lordships' modes of proceeding on former cases of impeachment; which report was ordered to be taken into consideration on Wednesday.

Lord Auckland moved, that the House should proceed on the trial of lord Melville *de die in diem*, except from any special considerations they should deem it expedient to adjourn to the day after the morrow of the day on which the motion should be made.

The earl of Radnor moved, that the further consideration of this motion should also be postponed till Wednesday. The earl of Rosslyn and the lord chancellor opposed this motion, on the ground of its being unnecessary, it being already the general and decided opinion of the House, that they ought to proceed on the trial *de die in diem*. The motion was then put and negatived. On putting the original motion,

The earl of Radnor opposed it, conceiving that four days in the week were as many as the House could devote to the trial, consistently with that attention which they must necessarily pay to other business. He declined, however, proposing any alteration in the motion. The motion was then put and carried.

*House of Lords, Tuesday, April 22.*

On the motion of lord Auckland, the order for taking the report of the impeachment proceedings committee into consideration tomorrow, was discharged, and the report was ordered to be referred to the said committee for revision, &c.

*House of Commons, Tuesday, April 22.*

Mr. Whitbread moved, that a committee be appointed to view the court erected in Westminster-hall for the trial of lord viscount Melville, and to report what accommodation and convenience had been made for the members of the House when present at the said trial, and that the managers for conducting the impeachment should be the said committee; which motions were agreed to.—He moved also, that the order be read from the Journals, made on the 13th July, 1805, for the attorney-general to institute a prosecution against lord Melville and Mr. Trotter, and which was since suspended, should be read by the clerk, which was agreed to; and the order being then read, he moved that the said original order be discharged, which was agreed to accordingly.

*House of Commons, Wednesday, April 23.*

Mr. Giles reported, from the committee of impeachment, that they had inspected the place in the court prepared for the accommodation of the House, and found that there would be sufficient space for the accommodation of 500 members, besides the managers of the impeachment. He then moved a string of resolutions, being those usual in such cases: That the managers do first go out of the House before the other members: that after the Speaker has left the House, the members be called by the clerk, according to their counties: That no member do go out till his county be called: That no person but members do presume to sit in the places appointed for members in Westminster-hall: That the serjeant do take all such into custody: for the more convenient passage to the hall, that the constables do attend and keep the same clear. Ordered.—The form of procedure in the cases of Dr. Sacheverell and Mr. Hastings, being entered as read, Mr. Giles moved, that the same precedents be observed on the trial of lord Melville. Ordered.—It was also ordered, that no member do cross, pass through, or remain in the passage to the hall, during the procession to and from the trial: also, that a note, with the name of the right hon. C. Bathurst, be given to the serjeant at arms, and that he do order him to attend at said trial.

*House of Lords, Thursday, April 24.*

Lord Walsingham reported from the committee appointed to search for precedents of proceedings on impeachments, the ceremonial proposed to be observed on the trial of lord Melville, which had been recommended to



them for alteration. His lordship having read the report,

The earl of Radnor moved to add to it, in conformity with three precedents of impeachments previous to that of Mr. Hastings, that the peers should remain in their places, and not depart from them during the trial on each day.—A long conversation ensued between lord Auckland, the earl of Radnor, lord Holland, lord Eldon, earl Stanhope, the earl of Westmeath, earl Spencer, the duke of Cumberland, the earl of Darnley, bishop of St. Asaph, and lord Ellenborough. Most of the above peers objected to the proposition, as tending by its strictness, to cause great inconvenience to the peers attending on the trial, whilst, at the same time, there was no doubt at all that that order would be preserved which the solemnity of such an occasion required.

The earl of Radnor conceived that the motion ought to be agreed to, in order to insure that strictness of order which was requisite on a solemn trial by impeachment, but in order to have a public attendance at its discussion, his lordship moved to adjourn the debate till the next day, and that the Lords be summoned. On this motion the House divided; Contents, 9; Not Contents, 15: Majority, 6. The report of the committee was then agreed to.

*House of Commons, Thursday, April 24.*

Ordered, on the motion of Mr. Whitbread,

that a message be sent to the Lords, with a list of witnesses to be summoned to attend the trial of lord Melville; and Mr. Whitbread was ordered to bear the message to the Lords. It was afterwards ordered, that a note be given to the serjeant at arms, with the name of the right hon. George Tierney, and orders to serve him with notice to attend at all times the trial of lord Melville.

Some discussion as to various regulations to be adopted during the trial of lord Melville took place in the House of Lords, on Friday the 25th, and Monday the 28th of April. [*Vide* 6 Hans. Parl. Deb. 904, 927]. On the last-mentioned day the following order was made on the motion of William Lord Auckland; "that this House does strictly prohibit and forbid any publication whatever of the trial of lord Melville, during the continuance of the same; and that notices of such order be posted up on the doors of this House, and on the doors of Westminster-hall." \*

\* See the discussion on lord Auckland's motion, 6 Hans. Parl. Deb. 927; see also the case of Jeremiah Brandreth and others, A. D. 1817, and the case of Arthur Thistlewood and others, A. D. 1820, *infra*.

### *Proceedings on the Trial of Henry Lord Viscount Melville.*

*Westminster Hall, Tuesday, April 29, 1806.*

*Managers for the Commons.*

*Samuel Whitbread, Esq.;*

The Right Hon. *Charles James Fox*, one of his Majesty's Principal Secretaries of State;

The Right Hon. *Charles Lord Viscount Howick*, First Lord Commissioner of the Admiralty [afterwards second Earl Grey];

The Right Hon. *Richard Brinsley Sheridan* [Treasurer of the Navy];

The Right Hon. Lord *Henry Petty* Chancellor and Under-treasurer of the Exchequer [afterwards third Marquess of Lansdowne];

*Charles Lord Viscount Marsham* [afterwards second Earl of Romney];

*Daniel Giles, Esq.;*

*William Lord Viscount Folkestone;*

*Jonathan Raine, Esq.;*

*Ffrench Laurence, Esq. LL. D.;*

*Thomas Creevey, Esq.;*

*Henry Holland, Esq.;*

*John Calcraft, Esq.* Clerk to the Board of Ordnance;

*Henry George Lord Porchester* [afterwards second Earl of Carnarvon];

*Lord Archibald Hamilton;*

*Charles Watkin Williams Wynn, Esq.;*

*Joseph Jekyll, Esq.* Solicitor General to the Prince of Wales [afterwards a Master in Chancery];

*Edward Morris, Esq.* [afterwards a Master in Chancery];

*Richard Grenville Brydges Chandos Earl Temple* [afterwards second Marquess of Buckingham] Joint Paymaster of the Forces;

*William Draper Best, Esq.* Sergeant at Law [afterwards a Judge of the Court of King's Bench];

The Right Hon. Lord *Robert Spencer*, Surveyor General of his Majesty's Woods, &c.;

*Sir Arthur Piggott*, his Majesty's Attorney General;

*Sir Samuel Romilly*, his Majesty's Solicitor General.

*Solicitors.*

*Messrs. Kaye and Winter, jun.*

*Counsel for Lord Melville.*

*Mr. Plumer* [afterwards Master of the Rolls];

*Mr. Adam* [afterwards Lord Chief Commissioner of the Jury Court of Scotland].



*Assistant Counsel.*

Mr. *Hobhouse.*

*Solicitors.*

Messrs. *Shawc* and *Le Blanc.*

FIRST DAY.

ABOUT eleven of the clock the Lords came from their own house into the Court, erected in Westminster-hall, for the trial of Henry lord viscount Melville, in the manner following:—

Gentlemen attending the Lord Chancellor  
Clerk Assistant of the House of Lords  
Clerk of the Parliament  
Clerk of the Crown in Chancery  
Clerk of the Crown in the King's Bench  
Masters in Chancery  
Sergeants at Law  
Judges  
Eldest Sons of Peers, and of Peeresses in their own right  
Peers, Minors  
Heralds  
Barons, two and two  
Bishops, do.  
Viscounts, do.  
Earls, do.  
Marquesses, do.  
Dukes, do.  
Lord Privy Seal [*Henry Lord Viscount Sidmouth*]  
Lord President of the Council [*William Earl Fitzwilliam*]  
Archbishop of Cashell [*Charles Brodrick*]  
Archbishop of York [*William Markham*]  
Serjeant at Arms attending the Great Seal, Purse Bearer  
Black Rod, Garter Principal King of Arms  
Lord Chancellor [*Thomas Lord Erskine*]  
Archbishop of Canterbury [*Charles Manners Sutton*]  
His Highness *William Frederick Duke of Gloucester*  
His Royal Highness *Adolphus Frederick Duke of Cambridge*  
His Royal Highness *Augustus Frederick Duke of Sussex*  
His Royal Highness *Ernest Augustus Duke of Cumberland*  
His Royal Highness *Edward Duke of Kent*  
His Royal Highness *William Henry Duke of Clarence*  
His Royal Highness *Frederick Duke of York*  
His Royal Highness *George Augustus Frederick Prince of Wales* [afterwards King George IV].

The Lords having taken their places in the court, according to their degrees, the Lord Chancellor being upon the uppermost wool-pack, the Commons and their managers being also in the seats respectively prepared for them, Henry Lord Viscount Melville, having a stool placed for him within the bar, and his counsel, viz. Mr. Plumer, Mr. Adam, and

Mr. Hobhouse, standing near him at the bar, the serjeant at arms made proclamation as follows:—

*Serjeant at Arms.*—O, yes; O, yes; O, yes; Our Sovereign Lord the King doth strictly charge and command all manner of persons to keep silence, upon pain of imprisonment.

*Lord Chancellor.*—My Lords, the House is resumed.—Is it your lordships' pleasure that the Judges have leave to be covered?

*Lords.*—Ay, ay.

Then the *Serjeant at Arms* made proclamation as follows:—

*Serjeant at Arms.*—O, yes; O, yes; O, yes; whereas charges of high crimes and misdemeanors have been exhibited by the Knights, Citizens and Burgesses, in Parliament assembled, in the names of themselves, and of all the Commons of the United Kingdom of Great Britain and Ireland, against Henry lord viscount Melville, all persons concerned are to take notice, that he now stands upon his trial, and they may come forth in order to make good the said charges.

Then the clerk, by direction of the Lord Chancellor, read the articles of impeachment—Lord Viscount Melville's answer—and the Replication of the House of Commons as follows:—

#### ARTICLES

*Exhibited by the Knights, Citizens, and Burgesses, in Parliament assembled, in the name of themselves and of all the Commons of the United Kingdom of Great Britain and Ireland, against Henry Lord Viscount Melville, in maintenance of their impeachment against him for high crimes and misdemeanors.*

WHEREAS the office of treasurer of his majesty's navy is an office of high trust and confidence; in the faithful and uncorrupt execution whereof, the subjects of this kingdom are most deeply interested: and whereas the ancient constitution of the said office of treasurer of the navy, and of other offices concerned in the receipt, disbursement, and control of the public money, having been found to be in some respects highly inexpedient in consequence of the increased expenditure of the country, did become the subject of serious deliberation in parliament: and whereas by an act of parliament made and passed in the twentieth year of the reign of his present majesty, and by several subsequent acts of parliament, for appointing and enabling commissioners to examine, take, and state the public accounts of this kingdom, and for other purposes therein mentioned, certain commissioners were constituted and appointed for examining, taking, and stating the accounts therein particularly men-



tioned; and also for examining and stating in what manner and at what times, the receipts, issues, and expenditures of the public monies were accounted for; and for considering of, and reporting by what means and methods the public accounts might in future be passed, and the accomptants compelled to pay the balances or monies due from them in a more expeditious, more effectual, and less expensive manner: and whereas the said commissioners did inquire into and report upon the matters by the said acts referred to their examination, and did discover and point out various abuses in many of the public offices entrusted with the receipt and expenditure of public money, and in particular in the office of the treasurer of his majesty's navy; and did propose and recommend sundry good and wholesome provisions and regulations for the reformation of the same, and particularly for preventing the public money issued for navy services from coming into the possession and custody of the treasurer of his majesty's navy, or the officers or persons employed under him; for depriving him and them of all opportunity of using and misapplying the public money to private purposes, and thereby exposing the same to the risk of loss; for making the Bank of England the sole place of deposit for the same; for removing from thenceforward, all temptations and inducements to applications for more public money than was necessary for the public service; for preventing all unnecessary delay in passing the public accounts of the treasurer of his majesty's navy, and in restoring to the public the balances remaining in his hands: and whereas the House of Commons having taken the reports of the said commissioners into consideration upon the nineteenth day of June one thousand seven hundred and eighty-two, did (among other things) resolve, that some regulations ought to be adopted for the purpose of lessening and keeping down the balances which appeared to have usually been in the hands of the treasurer of the navy; and did further declare their opinion, that from thenceforward, the paymaster-general of his majesty's land forces, and the treasurer of the navy for the time being, should not apply any sum or sums of money imprested to them or either of them, to any purpose of advantage or interest to themselves, either directly or indirectly:

And whereas for the more effectually carrying into execution the said resolutions of the House of Commons, and for preventing all future abuse and misapplication of the public money issued for navy services, his majesty, by warrant under his royal sign manual, bearing

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date the twenty-second day of June one thousand seven hundred and eighty-two, was most graciously pleased to augment the income of the right honourable Isaac Barré, as treasurer of his majesty's navy, and to add thereto the sum of two thousand one hundred and fifty pounds, that the said income might in future amount to four thousand pounds, which his majesty was then graciously pleased to grant to the said Isaac Barré, clear of all deductions, in full satisfaction of all wages and fees, and other profits and emoluments theretofore enjoyed by former treasurers of his majesty's navy; and whereas by letters patent, bearing date the nineteenth day of August one thousand seven hundred and eighty-two, his majesty was graciously pleased to give and grant unto the right honourable Henry Dundas now lord viscount Melville, the office of treasurer of his majesty's navy royal and ships, and receiver-general of all sums of money appointed, or from time to time to be appointed and payable for the support, maintenance, and reparation of his majesty's navy royal and ships, for emptions and provisions appertaining to and necessary for the said navy and ships, and for wages, salaries of officers, servants, and other persons whatever, belonging to the said navy or ships, or any other matter or thing whatsoever, in any manner touching or concerning the navy royal or ships; and for the exercise and occupation of the said office, and for and in satisfaction of all wages and fees of three-pence of lawful money for every pound to be received and paid by the said Henry Dundas, by virtue of his said office, his majesty was further graciously pleased to give and grant unto him by the said letters patent, an annuity or yearly payment of two thousand pounds:

And whereas the said Henry lord viscount Melville represented, or caused to be represented, or it was represented to his majesty, that the said annuity or yearly payment of two thousand pounds, after deducting all charges, taxes, and expences thereon, would not produce to him the said Henry lord viscount Melville more than the sum of one thousand eight hundred and fifty pounds in each year, or thereabouts; whereupon his majesty, by warrant under his royal sign manual, bearing date the twenty-third day of October one thousand seven hundred and eighty-two, was graciously pleased to declare that the income of the treasurer of the navy should be augmented with an additional allowance of two thousand three hundred and twenty-four pounds six shillings and sixpence, in order to make, together with the said sum of one thousand eight hundred and



fifty pounds, the said income to amount in future to the sum of four thousand pounds: and his majesty did thereby direct, authorize, and empower the said Henry lord viscount Melville to take and apply out of such monies as were in, or should come to his hands, or to the hands of his cashier, arisen or to arise by the sale of old naval stores, the said sum of two thousand three hundred and twenty-four pounds six shillings and sixpence, which, together with the before-mentioned sum of one thousand eight hundred and fifty pounds would make the said sum of four thousand pounds, which his majesty was graciously pleased to grant him, clear of all deductions, in full satisfaction of all wages and fees, and other profits and emoluments theretofore enjoyed by former treasurers of the navy; the same to commence and be computed from the day of the date of the said letters patent, and to continue during his continuance in the said office: and his majesty did further direct, authorize, and empower the said Henry lord viscount Melville, in case the said additional allowance of two thousand three hundred and twenty-four pounds six shillings and sixpence, together with the said several allowances before stated, should not produce in each year the nett sum of four thousand pounds, to charge the deficiency in the annual amount of monies disbursed by him for fees of divers natures; and whereas the said Henry lord viscount Melville held and enjoyed the said office of treasurer of his majesty's navy, under the said letters patent, from the said nineteenth day of August one thousand seven hundred and eighty-two, until the tenth day of April one thousand seven hundred and eighty-three:

And whereas by letters patent, bearing date the fifth day of January one thousand seven hundred and eighty-four, his majesty was graciously pleased again to give and grant unto the said Henry lord viscount Melville the said office of treasurer of his majesty's navy, in the same terms as in the said former letters patent of the nineteenth day of August one thousand seven hundred and eighty-two; and upon a similar representation made or caused to be made by the said Henry lord viscount Melville, or otherwise made to his majesty as that herein-before stated, his majesty was graciously pleased by warrant under his royal sign manual, bearing date the sixteenth day of January one thousand seven hundred and eighty-four, to augment the income of the said office of treasurer of the navy with an additional allowance of two thousand three hundred and twenty-four pounds six shillings and sixpence, in or-

der to make the annual income of the said office amount to the said sum of four thousand pounds; and which said income his majesty was thereby graciously pleased to grant to the said Henry lord viscount Melville, clear of all deductions, in full satisfaction of all wages and fees, and other profits and emoluments theretofore enjoyed by former treasurers of the navy, and to secure and provide for the due payment thereof in like manner as in the said former warrant of the twenty-third day of October one thousand seven hundred and eighty-two is provided:

And whereas the said Henry lord viscount Melville, under and by virtue of the said last-mentioned letters patent, held and enjoyed the said office of treasurer of his majesty's navy, from the said fifth day of January one thousand seven hundred and eighty-four, until the thirty-first day of May one thousand eight hundred:

And whereas on the seventeenth day of February one thousand seven hundred and eighty-five, the House of Commons ordered that leave should be given to bring in a bill for better regulating the office of the treasurer of his majesty's navy, and that (together with other members of the said House of Commons) Mr. Henry Dundas, now lord viscount Melville, should prepare and bring in the same; and in pursuance of the said order, the said Henry lord viscount Melville, on the twenty-ninth day of April one thousand seven hundred and eighty-five, did present to the House of Commons a bill for better regulating the office of the treasurer of his majesty's navy; and the said bill having passed the House of Commons, was, in pursuance of an order of that House, carried by the said Henry lord viscount Melville to the House of Lords; to which bill he (in the name of the House of Commons) desired the concurrence of their lordships.

And whereas the said bill, in the twenty-fifth year of his majesty's reign, passed into a law, intituled, "An Act for better regulating the office of the Treasurer of his Majesty's Navy;"—The first, third, fourth, and fifth sections whereof are as follows:

First section.—"Whereas it appears by the reports made by the commissioners appointed to examine, take, and state the public accounts of the kingdom, that regulations are necessary for better conducting the business in the department of the treasurer of his majesty's navy; be it therefore enacted by the king's most excellent majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present parliament assembled, and by the authority of the same, that from



and after the first day of July one thousand seven hundred and eighty-five, the treasurer of his majesty's navy for the time being, in all memorials to be by him presented to the treasury for money for navy services, shall pray that such sum as he requires may be issued to the governor and company of the Bank of England on his account, and shall transmit with each memorial a copy of the letter or letters from the commissioners of the navy, victualling, and sick and hurt boards, directing him to apply for such sum or sums; in which letter or letters the said commissioners shall, and they are hereby required and directed to specify for what particular service or services the said money is wanted, and shall also state the balances then in the hands of the treasurer of the navy under each head of service respectively; and the commissioners of his majesty's treasury for the time being, by their letter from time to time, shall direct the auditor of the exchequer to issue to the governor and company of the Bank of England, on account of the treasurer of his majesty's navy, naming such treasurer for the time being, the sum for which such letter shall be drawn upon the unsatisfied order at the Exchequer, in favour of the said treasurer, for which the receipt of the cashier or cashiers of the said governor and company shall be a sufficient discharge; and all sums for which letters of the commissioners of his majesty's treasury shall be drawn, shall be issued to the governor and company of the Bank of England in like manner as they have been heretofore issued to the treasurer of his majesty's navy; and all such monies to be issued to the governor and company of the Bank of England shall be placed on an account or accounts to be raised in the books of the governor and company of the said Bank of England, and to be intituled, 'the account of the treasurer of his majesty's navy,' inserting the name of such treasurer for the time being, for the pay branch, cashiers' branch, and the victualling branch; and on receipt of all such monies at the Exchequer, the treasurer of the navy shall immediately certify to the commissioners of the navy, an account of the whole receipt under the respective heads of service, and shall also certify to the commissioners of the victualling and sick and hurt boards, the particular sums received and applicable to those services respectively."

Third section.—"And be it further enacted, that, from and after the first day of July one thousand seven hundred and eighty-five, no money for the service of the navy shall be issued from his majesty's Exchequer to the treasurer of the navy, or shall be placed or directed to be

placed in his hands or possession; but the same shall be issued and directed to be paid to the governor and company of the Bank of England, and to be placed to the accounts above-mentioned, according to the services for which it is craved and issued."

Fourth section.—"And be it enacted, that the treasurer of his majesty's navy for the time being, by himself, or the person or persons in his office duly authorized by the said treasurer, from and after the first day of July one thousand seven hundred and eighty-five, shall draw upon the governor and company of the Bank of England for all navy services whatever, and shall specify in each and every draft the head of service for which the same is drawn; and no draft of the said treasurer, or the person or persons authorized as aforesaid, shall be deemed a sufficient voucher to the said governor and company to the Bank of England, unless the same specifies the head of service for which it is drawn, and has been actually paid by the said governor and company of the Bank of England."

Fifth section.—"Provided always, that the monies to be issued unto the governor and company of the Bank of England, on account of the treasurer of his majesty's navy, shall not be paid out of the Bank unless for navy services, and in pursuance of drafts to be drawn on the governor and company of the Bank of England, and signed by the treasurer of his majesty's navy for the time being, or the person or persons authorized as aforesaid; in which drafts shall be specified the heads of service to which the sums therein mentioned are to be applied; and which drafts so drawn shall be sufficient authority to the Bank to pay such money to the persons mentioned in such drafts, or to the bearer of them."

And whereas the provisions contained in the said last-mentioned act of parliament were thereby directed to take place on the first day of July one thousand seven hundred and eighty-five: but the execution of the said act, with respect to the said Henry lord viscount Melville opening an account or accounts with the governor and company of the bank of England, as thereby directed, was postponed by him until the thirteenth day of January one thousand seven hundred and eighty-six, when the said Henry lord viscount Melville opened an account with the governor and Company of the Bank of England, intituled, "Right Honourable Henry Dundas, Act of Parliament New Account;" and which said account was continued by him until he quitted the said office on the thirty-first of May one thousand eight hundred, and was the only account kept by the said Henry lord



viscount Melville as treasurer of his majesty's navy, with the governor and company of the Bank of England, under and in pursuance of the said act of parliament for regulating his said office:

And whereas on the tenth day of January one thousand seven hundred and eighty-six, whilst the said Henry lord viscount Melville held and enjoyed the said office of treasurer of his majesty's navy, he did constitute and appoint Alexander Trotter his paymaster; and the said Henry lord viscount Melville did, on the said tenth day of January one thousand seven hundred and eighty-six, duly authorize and empower the said Alexander Trotter to draw on the governor and company of the Bank of England, for and upon the account of him the said Henry lord viscount Melville as treasurer of his majesty's navy, all and every sum and sums of money that then were or should thereafter be wanted for the public services, under the care of payment of the said Henry lord viscount Melville, the said Alexander Trotter being particularly careful to specify on each and every draft the service for which the money shall be drawn:

And whereas it was the duty of the said Henry lord viscount Melville, during all the time he held and enjoyed the said office of treasurer of his majesty's navy, to abstain from applying himself, and to prevent all persons acting under him from applying any part of the money issued from his majesty's Exchequer for navy services, to any purpose of advantage or interest to himself or themselves, either directly or indirectly, or to any other purposes than for navy services, and from deriving any profit or emolument therefrom: and from and after the passing of the said act of parliament of the twenty-fifth year of his majesty's reign, for better regulating the office of the treasurer of his majesty's navy, it was the duty of the said Henry lord viscount Melville to observe and pursue the provisions and directions of the said act of parliament; yet the said Henry lord viscount Melville, not satisfied with the ample revenue so provided for him as aforesaid, nor regarding the duty of his high and important office, or the express provisions of the said act of parliament, did, whilst he so held and enjoyed the said office, act and conduct himself fraudulently, corruptly, and illegally in the several instances herein set forth:

*Article First.*

That the said Henry lord viscount Melville whilst he held and enjoyed the said office of treasurer of his majesty's navy, and previous to the said tenth day of January one thousand seven hundred and

eighty-six, did take and receive from and out of the money imprested to him as treasurer of his majesty's navy, from his majesty's Exchequer, the sum of ten thousand pounds, or some other large sum or sums of money, and did fraudulently and illegally convert and apply the same to his own use, or to some other corrupt and illegal purposes, and to other purposes than those of the public navy services of the kingdom, to which alone the same was lawfully applicable; and did continue such fraudulent and illegal conversion and application of the said sum or sums of money after the passing of the said act of parliament for the better regulating the office of the treasurer of his majesty's navy: and the said Henry lord viscount Melville has declared, that he never would reveal the application of the said sum of ten thousand pounds, and in particular he did make such declaration in the House of Commons on the eleventh day of June one thousand eight hundred and five; and then and there added, that he felt himself bound by motives of public duty, as well as private honour and personal convenience, to conceal the same. All which conduct of the said Henry lord viscount Melville, was contrary to the duty of his said office, a breach of the high trust reposed in him, and a violation of the laws and statutes of this realm.

*Article Second.*

That the said Henry lord viscount Melville, disregarding the duties of his said office, and in breach and violation of the said act of parliament for better regulating the same, did, after the passing of the same act, and whilst the said Henry lord viscount Melville continued to hold and enjoy the said office, connive at and permit and suffer the said Alexander Trotter, under and by virtue of the said authority so given to him by the said Henry lord viscount Melville as aforesaid, illegally to draw, receive, and take, from the governor and company of the Bank of England, for other purposes than for immediate application to navy services, large sums of money from and out of the monies before then issued unto the said governor and company of the Bank of England on account of the said Henry lord viscount Melville as treasurer of his majesty's navy: and the said Henry lord viscount Melville did connive at and permit and suffer the said Alexander Trotter to place the last-mentioned sums of money, or a great part thereof, so illegally drawn, received, and taken by him from the governor and company of the Bank of England as aforesaid, in the hands of Messieurs Thomas Coutts and company, the private bankers of the said Alexander



Trotter, in his own name, and subject to his sole control and disposition: all which conduct of the said Henry lord viscount Melville was contrary to the duty of his said office, a breach of the high trust reposed in him, and a violation of the laws and statutes of the realm.

*Article Third.*

That after the passing of the said act of parliament for better regulating the office of the treasurer of his majesty's navy, and after the said tenth day of January, one thousand seven hundred and eighty-six, and whilst the said Henry lord viscount Melville held and enjoyed the said office, large sums of money were from time to time issued and paid to the governor and company of the Bank of England, and placed on an account raised in the books of the said governor and company with the said Henry lord viscount Melville, intituled, "Right Honorable Henry Dundas, Act of Parliament New Account:" and the said Alexander Trotter, under and by virtue of the said authority from the said Henry lord viscount Melville, did, from the said tenth day of January, one thousand seven hundred and eighty-six, during all the time the said Henry lord viscount Melville afterwards continued to hold and enjoy the said office of treasurer of his majesty's navy, draw upon the said governor and company of the Bank of England for and on account of the monies so issued and paid to them, and placed to the said account so raised in their books, with the said Henry lord viscount Melville, as such treasurer as aforesaid: and the said Alexander Trotter did receive and take large sums of money so drawn by him from the said governor and company of the Bank of England as aforesaid.

That the said Henry lord viscount Melville did, after the said tenth day of January one thousand seven hundred and eighty-six, fraudulently and illegally permit and suffer the said Alexander Trotter to place many of the said sums of money so drawn, received and taken by him from the governor and company of the Bank of England as aforesaid, in the hands of Messieurs Thomas Coutts and company, the private bankers of the said Alexander Trotter, in his own name and at his own disposal: and the said Alexander Trotter did thereupon, with the privity, by the connivance, and with the permission of the said Henry lord viscount Melville, apply and use the said last-mentioned sums of money, or great part thereof, for purposes of private advantage or interest, profit, and emolument; and did place the said sums of money, or a great part thereof, in the hands of the said Messieurs Coutts and company, mixed with

and undistinguished from the proper monies of the said Alexander Trotter, whereby the said last-mentioned sums of money were not only applied to and used for purposes of private advantage or interest, profit, and emolument, and for purposes other than navy services; but were also exposed to great risk of loss, and were withdrawn from the control and disposition of the treasurer of his majesty's navy: and the said Henry lord viscount Melville, by so conniving at and permitting and suffering the public money to be withdrawn from the Bank of England, and used and applied in manner aforesaid, acted in breach of the great trust and confidence reposed in him, in violation of the said act of parliament made for regulating his said office, contrary to his duty and against the laws of this realm, and to the evil example of all persons entrusted in the great departments of the public service, with any control over the application and expenditure of the public money.

*Article Fourth.*

That after the said tenth day of January, one thousand seven hundred and eighty-six, and whilst the said Henry lord viscount Melville held and enjoyed the said office of treasurer of his majesty's navy, the said Alexander Trotter did, with the privity, or by the connivance and permission of the said Henry lord viscount Melville, place sums of money, issued from his majesty's Exchequer unto the governor and company of the Bank of England, on account of the treasurer of his majesty's navy, and drawn, received, and taken, by him the said Alexander Trotter, from the governor and company of the Bank of England, in the hands of Mark Sprott and other persons, and did apply and use the same for purposes of private advantage or interest, profit and emolument, or for purposes other than navy services.

*Article Fifth.*

That after the said tenth day of January, one thousand seven hundred and eighty-six, and whilst the said Henry lord viscount Melville held and enjoyed the said office of treasurer of his majesty's navy, he the said Henry lord viscount Melville did fraudulently and illegally, for the purpose of advantage or interest to himself, or for acquiring or obtaining profit or emolument therefrom, or for some other corrupt and illegal purposes, and for purposes other than navy services, take and receive from the public money placed in his name at the Bank of England, as treasurer of his majesty's navy, the sum of ten thousand pounds, or some other large sum or sums of money, and



did fraudulently and illegally convert and apply the same to his own use, or to some other corrupt and illegal purposes: all which conduct of the said Henry lord viscount Melville was contrary to the duty of his said office, a breach of the high trust reposed in him, and a violation of the laws and statutes of this realm, and to the like evil example as aforesaid.

*Article Sixth.*

That after the said tenth day of January, one thousand seven hundred and eighty-six, and whilst the said Alexander Trotter so continued the paymaster of the said Henry lord viscount Melville as aforesaid, and with such privity, connivance, and permission as aforesaid, so applied and used the said sums of money, or great part thereof, for purposes of private advantage, profit, and emolument as aforesaid, the said Henry lord viscount Melville fraudulently concealing the illegal use and application of the same, did procure, obtain, and receive from the said Alexander Trotter, advances of several large sums of money, which were made to him the said Henry lord viscount Melville, by the said Alexander Trotter, in part from money so as aforesaid illegally drawn by him the said Alexander Trotter, from the governor and company of the Bank of England, and in part from sums of money so placed by the said Alexander Trotter in the hands of the said Messieurs Coutts and company as aforesaid, when mixed with and undistinguished from the proper monies of the said Alexander Trotter:

That during the time the said Alexander Trotter held and enjoyed the said office of paymaster to the said Henry lord viscount Melville as aforesaid, and whilst the said Henry lord viscount Melville held and enjoyed the said office of treasurer of his majesty's navy as aforesaid, he the said Alexander Trotter kept with the said Henry lord viscount Melville an account current, entered in certain books of account, containing entries of all the sums paid and received by the said Alexander Trotter on the account of the said Henry lord viscount Melville, and by agreement between the said Henry lord viscount Melville and the said Alexander Trotter, bearing date the eighteenth and twenty-third days of February, one thousand eight hundred and three, it is stated that they had either mutually delivered up to each other, or resolved and agreed mutually to cancel or destroy, all the vouchers or other memorandums and writings that at any time heretofore might have existed, passed, or been interchanged between them relative to the said accounts, and the different items

and articles of which the said accounts were composed or consisted: and the said books of account, containing the said account current, together with all vouchers, or other memorandums and writings, in the possession of the said Alexander Trotter, and also of the said Henry lord viscount Melville, relative thereto, were burnt and destroyed by the said Henry lord viscount Melville and Alexander Trotter: and the said stipulation contained in the said agreement for the said Henry lord viscount Melville and Alexander Trotter mutually delivering up to each other, or for mutually cancelling and destroying all the said vouchers, or other memorandums or writings relative to the said account, was so entered into; and the said books of account, vouchers, memorandums, and writings, were so burnt and destroyed, with a view to conceal and prevent the discovery of the several advances of money made by the said Alexander Trotter to the said Henry lord viscount Melville, and of the several accounts or considerations for or upon which the same were so advanced.

*Article Seventh.*

That amongst other advances of money so as aforesaid obtained and received by the said Henry lord viscount Melville, from the said Alexander Trotter, the said Henry lord viscount Melville did procure, obtain, and receive from the said Alexander Trotter, a sum of twenty-two thousand pounds, or some other large sum or sums of money, advanced by the said Alexander Trotter to the said Henry lord viscount Melville, without interest; part whereof was so advanced exclusively from public money so as aforesaid illegally drawn from the governor and company of the Bank of England by the said Alexander Trotter: and other part whereof was advanced from the said mixed fund, composed as well of public money so as aforesaid illegally drawn by the said Alexander Trotter from the governor and company of the Bank of England, and placed by him in the hands of the said Messieurs Coutts and company as aforesaid, as of the proper monies of the said Alexander Trotter, in the hands of the said Messieurs Coutts and company, which had been mixed therewith, and remained undistinguished therefrom; and for the purpose of more effectually concealing the said advances of money, the said books of account, vouchers, memorandums, and writings, were so as aforesaid burnt and destroyed.

*Article Eighth.*

That amongst other advances of money so as aforesaid obtained and received by



the said Henry lord viscount Melville from the said Alexander Trotter, the said Henry lord viscount Melville did obtain and receive a sum of twenty-two thousand pounds, or some other large sum or sums of money advanced to him by the said Alexander Trotter: and for which it has been alleged by the said Henry lord viscount Melville, that he was to pay interest; and for the purpose of more effectually concealing the said last-mentioned advances of money, the said books of account, vouchers, memorandums, and writings, were so as aforesaid burnt and destroyed.

*Article Ninth.*

That during all or great part of the time the said Alexander Trotter held and enjoyed the said office of paymaster to the said Henry lord viscount Melville as aforesaid, and the said Henry lord viscount Melville held and enjoyed the said office of treasurer of his majesty's navy as aforesaid, he the said Alexander Trotter did gratuitously, and without salary or other pecuniary compensation, act in and transact the private business of the said Henry lord viscount Melville, as his agent, and was from time to time in advance for the said Henry lord viscount Melville in that respect to the amount of from ten thousand to twenty thousand pounds, or to some other great amount, and which advances were taken from the said sums of money so placed by the said Alexander Trotter in the hands of the said Messieurs Coutts and company, consisting in part of public money, drawn by him from the governor and company of the Bank of England as aforesaid, and in part of his own private monies mixed therewith, and undistinguished therefrom as aforesaid; by means whereof the said Henry lord viscount Melville did derive benefit and advantage from the aforesaid illegal acts of the said Alexander Trotter:

And the said Alexander Trotter did so gratuitously, and without salary, act in and transact the private business of the said Henry lord viscount Melville, and make him such advances of money as aforesaid, in consideration of the said Henry lord viscount Melville conniving at and permitting and suffering the said Alexander Trotter so as aforesaid to apply and make use of the said sums of public money so drawn by him from the Bank of England, and applied and appropriated for purposes of private advantage, or interest, profit, and emolument as aforesaid: and the said Alexander Trotter would not have been, and was well known to the said Henry lord viscount Melville not to have been able to make such advances of money to the said Henry lord viscount Melville as aforesaid, otherwise

than from and by means of the said sums of public money so drawn by the said Alexander Trotter from the Bank of England, with the privity, connivance, and permission of the said Henry lord viscount Melville as aforesaid, and applied by the said Alexander Trotter for purposes of private advantage, interest, profit, and emolument: all which proceedings and conduct of the said Henry lord viscount Melville were contrary to the duty of his said office, in breach of the great trust reposed in him, and in gross violation of the laws and statutes of this realm: and by all and every one of the aforesaid acts done and committed by him the said Henry lord viscount Melville, he was and is guilty of high crimes and misdemeanors.

And the said knights, citizens, and burgesses, by protestation, saving to themselves the liberty of exhibiting at any times hereafter any further articles, or further accusations or impeachment against the said Henry lord viscount Melville: and also of replying to the answers which he shall make unto the said articles or any of them, and of offering proof of all and every of the aforesaid articles, and of all and every other articles, impeachment, or accusation, which shall be exhibited by them as the case shall, according to the course of parliament, require, do pray that the said Henry lord viscount Melville may be put to answer the said crimes and misdemeanors, and that such proceedings, examinations, trials, and judgments may be thereupon had and given as are agreeable to law and justice.

*The ANSWER of Henry Lord Viscount Melville to the Articles exhibited by the Knights, Citizens, and Burgesses, in Parliament assembled, in the Name of themselves and of all the Commons of the United Kingdom of Great Britain and Ireland, in maintenance of their Impeachment against him for high Crimes and Misdemeanors.*

The said viscount, saving to himself all advantage of exception to the insufficiency of the said articles in point of law; and of not being prejudiced by any want of form in this his answer; and also all rights and privileges belonging to him as one of the peers of this realm; for answer to the said articles, saith, that he is in nowise guilty of all or any of the supposed crimes or misdemeanors, of what nature, kind or quality soever, by the said articles charged upon him, in manner and form as in and by the said articles is supposed; and this he is ready to prove as this right honourable House shall award; and he humbly submitteth himself, and the justice of his cause, to this



right honourable House; and prayeth that he may be discharged of the premises, and be hence dismissed and acquitted of all the matters untruly alleged against him.

MELVILLE.

*A further ARTICLE (being the Tenth) exhibited by the Knights, Citizens, and Burgesses in Parliament assembled, in the name of themselves and of all the Commons of the United Kingdom of Great Britain and Ireland, against Henry Lord Viscount Melville, in maintenance of their Impeachment against him for High Crimes and Misdemeanors.*

*Article Tenth.*

That Henry lord viscount Melville, after his majesty had by letters patent, bearing date the nineteenth day of August, one thousand seven hundred and eighty-two, given and granted unto him the office of treasurer of his majesty's navy, did on divers days and times between that day and the fifth day of January one thousand seven hundred and eighty-four, and also on divers days and times between the said fifth day of January, one thousand seven hundred and eighty-four, and the first day of January, one thousand seven hundred and eighty-six, take and receive from and out of the monies from time to time issued or paid to him as treasurer, or as ex-treasurer of his majesty's navy, from his majesty's Exchequer or some other sources, for naval services, divers large sums of money, amounting together to a large sum, to wit, twenty-seven thousand pounds, or thereabouts, and did fraudulently and illegally convert and apply the same to his own use, or to some other corrupt and illegal purposes, and to other purposes than those of the public naval services of this kingdom, to which alone the same was lawfully applicable; and did continue the said fraudulent and illegal conversion and application of divers of the said sums of money, after the passing of the act of parliament, for the better regulating the office of treasurer of his majesty's navy.

And the said knights, citizens, and burgesses, by protestation, saving to themselves the liberty of exhibiting at any times hereafter any further articles or further accusations of impeachment against the said Henry lord viscount Melville, and also of replying to the answers which he shall make unto the said articles, or any of them, and of offering proof of the aforesaid article, and of all and every other articles, impeachment, or accusation which shall be exhibited by them, as the case shall, according to the

course of parliament, require, do pray that the said Henry lord viscount Melville may be put to answer the said crimes and misdemeanors; and that such proceedings, examinations, trials, and judgments may be thereupon had and given as are agreeable to law and justice.

*The ANSWER of Henry Lord Viscount Melville to the further Article (being the Tenth), exhibited by the Knights, Citizens, and Burgesses, in Parliament assembled, in the name of themselves and of all the Commons of the United Kingdom of Great Britain and Ireland, in maintenance of their Impeachment against him for High Crimes and Misdemeanors.*

The said viscount, being called upon to answer the said further article, under circumstances of which no precedent is to be found in the Journals of parliament, feels it incumbent upon him to enter his humble protest against being bound by the law and custom of parliament, or the laws of the realm, to answer such further article; nevertheless the said viscount, confiding in the goodness of his cause, and the justice of this right honourable House, and saving to himself all advantage of exception to the insufficiency of the said further article in point of law, and of not being prejudiced by any want of form in this his answer; and also all rights and privileges belonging to him as one of the peers of this realm; for answer to the said further article saith, that he is in nowise guilty of the supposed crimes or misdemeanors by the said article charged upon him, in manner and form as by the same is supposed; and this he is ready to prove as this right honourable House shall award: and he humbly submitteth himself, and the justice of his cause, to this right honourable House, and prayeth that he may be discharged of the premises, and be hence dismissed and acquitted of all the matters by the said further article untruly alleged against him.

MELVILLE.

THE REPLICATION.

The Commons having considered the answers of Henry lord viscount Melville to the articles of impeachment exhibited against him by the knights, citizens, and burgesses in parliament assembled, in the names of themselves and of all the Commons of the United Kingdom of Great Britain and Ireland, for replication to the said answers, do say,

That the said Henry lord viscount Melville is guilty of the high crimes and misdemeanors mentioned in the said articles, and that the said Commons are ready to prove the same.



*Lord Chancellor.*—My lords, the distance of this place from the bar is so great, that I must desire your lordships' leave to go down to the table for the convenience of hearing.

*Lords.*—Ay, ay.

Then his lordship removed to the table.

*Lord Chancellor.*—Gentlemen, managers for the Commons, you may now proceed.

*Mr. Whitbread.*—My lords, I am commanded to open to your lordships at once, all the articles of impeachment exhibited by the Commons of the United Kingdom against Henry lord viscount Melville, the defendant within your bar. And, my lords, this course is adopted as much, because (as your lordships will have perceived), the matters of charge are in themselves difficult of separation; as because those to whom the management of this cause has been entrusted, have determined that upon them shall rest no imputation whatever of delay.

My lords, I fear it will be necessary for me to enter into a long and fatiguing detail of perplexed accounts; to give a narrative of dry facts, which from their very notoriety are become uninteresting; and which are susceptible of no embellishment, even if he who addresses you, were ambitious of bestowing it upon them. But, my lords, I will neither delay nor offend your lordships by asking for your patient attention to the hearing of this case; because patience is indispensably necessary to the due administration of justice, and I know that I am now pleading before one of the most august tribunals in which justice has ever presided upon earth.—Neither will I waste much of your time in entreating your indulgence for the manifest deficiencies of him who addresses you. It shall be my endeavour to be perspicuous, and as concise as can be consistently with that perspicuity. My lords I have undertaken the task; and it shall be executed to the best of my ability. Not that I am insensible either to the situation in which I stand, or to the circumstances which surround me. I know that I fill a post, which has been but rarely occupied in the annals of our history. I know that when it has been filled, it has been filled by the most eminent of the past and present day. I am duly impressed with the magnificence of this scene. I know the strength, and remaining influence of the accused: and, above all, I am perfectly acquainted with the ability and great legal acquirements of those who are counsel for him, and therefore arrayed against us.—My lords, I know that, added to the common attainments which so extensive a knowledge and practice in their profession must have given them, they have peculiar experience in the sort of trial upon which we are now proceeding. For it so happens that they have both been engaged upon a trial of this nature:\*

\* The Impeachment of Warren Hastings.  
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one has acted in support of, and the other against, a prosecution by impeachment. But, my lords, I will confess to you, that I am far from being appalled by that which I have stated; and if there were any thing of native vigor or energy in my mind, these are the circumstances which would call it forth.

My lords, I feel some gratification (not unmixed with the strongest emotions of anxiety and alarm, but neither unjust nor ungenerous, I trust) in the selection which has been made. I feel the weight of the cause which I have undertaken as it respects the public and the accused. But, my lords, when I look back to the day, the memorable day, on which the seeds of this trial were sown, I own I am proud that this hour is arrived; and more especially as we, the Commons, have an opportunity of knowing that by a singular felicity, when it was found the charges which had been urged against the noble viscount must be brought to an issue; this is the court before which, and your bar is the place where, the dearest friends and connexions of the noble defendant, by preference, chose that he should be tried.—My lords, I exult in the splendor and publicity of the justice of my country. Nay, I think there is great cause to rejoice in the strength of the noble viscount, and in the powers of those who defend him; because, as it must be a most painful task for any just and generous mind, to plead against a weak, undefended, and defenceless wretch; and a just and generous tongue would falter in the execution of such an office; seeing what we now see before us, it becomes our duty to urge home every charge we feel to be true; for we know that no mistake of ours can go uncorrected, and we know that your lordships will allow, and that the learned counsel will take, every fair advantage for the noble defendant.

But, my lords, I trust, that whatever ardor I may feel to bring to an issue honourable to the Commons of the United Kingdom, that charge which they have exhibited, I shall not be betrayed into any intemperance of expression. My lords, truth delights in the language of temperance; and she makes her most forcible appeal in the accents of moderation: and I may be believed when I say, that I am as anxious to avoid the infliction of unnecessary wounds upon the noble defendant himself, much more upon those who are most near and dear to him, as I am eager to obtain a legal conviction upon that which I know to be moral guilt.

Neither, my lords, will I sin in the opposite extreme. I will not be betrayed, by an affectation of candor, into a dereliction of duty.—I will speak only for that I love—I will speak for justice. If the party accused have done so, as we charge, his fault is double; for he came in upon reformation, and having discovered the abuses of others. This I would say unto you if I were to die this hour, faults by mistaking—God forbid! that you should



be harsh in censuring them; but errors that are wilful, spare them not.

My lords, the preamble to the articles of the Commons commences with a proposition so self-evident, that I need not dwell upon it. It commences by telling you, that the office of treasurer of the navy is one of great trust and importance; in the due execution of which the subjects of this realm are peculiarly interested.—I need not dwell upon that with your lordships. That all the great offices of this country should be duly and justly administered, and that all the great officers filling those situations should be men of high honor, is a thing so evident, that I need not say one word about it: excepting this, that if there be any office under the Crown which requires more peculiarly a just and upright administration, it is that of treasurer of the navy: because it is an office, as has been reported to the House of Commons, which requires no pains or trouble whatever in the execution of it.

Neither, my lords, upon the ancient constitution of the office will it be necessary for me to detain you long. Your lordships are all well acquainted with the origin and progress of it. That it was founded in the latter end of the century before the last; that a certain stipend was allowed to the person who executed it; that there was a fixed salary originally granted, in lieu of all fees and gratuities; that in the course of the administration of the office, large sums of public money passed through the hands of the person who was treasurer of the navy, as a banker, and not as an accountant; that by degrees use was made, by the persons exercising the office of treasurer, of the money that passed through their hands; and although it was never legal so to use it, yet that, down to a certain period, uninterrupted custom had rendered it irreproachable in those who exercised that office to take advantage of their situation, and to make profit of the public money.

My lords, at the close of the American war, when the expences of the country had risen to a great height, when it was necessary to adopt plans of economy and reform, and when there existed in the House of Commons spirits determined to inquire into the true situation of the country, a commission was instituted by act of parliament, to ascertain what had been the mode of expending the public money; what balances it would be right to call for, and what prospective enactments would be necessary for the due administration of the public treasure. These commissioners (one\* of whom is now a manager for the Commons) executed the trust reposed in them with diligence and ability. They made a variety of reports; and, among others, a special report on the office of treasurer of his majesty's navy. Among other things, they

\* Sir Arthur Pigott, at the time of this trial his majesty's attorney-general.

stated the balances that had remained in the hands of the ex-treasurers of the navy; and advised that regulations should be made to prevent such accumulations in future; as well as to remove the temptations from succeeding treasurers, to do that which they complained their predecessors had done. In consequence of this advice of the commissioners, certain resolutions were entered into by the House of Commons, with which it is necessary that I should trouble your lordships at length.

On the 18th of June, 1782, it was resolved, in a committee of the whole House, "That it was the opinion of that committee, that certain regulations ought to be adopted for the purpose of lessening and keeping down the balances of public money which appear to have been usually in the hands of the treasurer of the navy, and that it would be beneficial to the public if the first and other clerks in the different branches belonging to the said office were paid by fixed and permanent salaries, in lieu of all fees, gratuities, or perquisites whatever." And it was further resolved, "That it was the opinion of that committee, that from thenceforward the paymaster-general of his majesty's land forces, and the treasurer of the navy for the time being, should not apply any sum or sums of money impressed to them, or either of them, to any purpose of advantage or interest to themselves, either directly or indirectly."

My lords, I say that a new era was then created in the office of treasurer of the navy; that, from the moment that resolution was passed in the House of Commons, the illegality of the proceedings which had been before permitted was recognized, and that the person who thereafter should derive either interest or advantage from the use of public money, either directly or indirectly, was impeachable at the bar of your lordships House.

My lords, Mr. Barré,—a man who will be always recollected in this country with respect,—held the office of treasurer of the navy at the time these resolutions were passed. In order to make them, if possible, more binding on Mr. Barré, immediately after they were passed, an increase of salary was granted, in lieu of all those allowed, but not legal, perquisites which other treasurers had enjoyed, and it was made 4,000*l.* a year. How did Mr. Barré interpret this resolution? *He*, never before, I believe, but certainly never afterwards, made the slightest profit or advantage of the public money.

Mr. Barré had the money belonging to his office invariably deposited in the Bank of England. But Mr. Barré even after those resolutions were passed, was not bound to deposit his money in the Bank of England; although he *was bound* not to derive any interest or advantage from it whatever.

Now, with regard to the custom of the office, previous to and at the time Mr. Barré first held it. Although the treasurers had, probably, almost from the earliest time, made



use of the public money to their own benefit and advantage; still the usual place of deposit of the money issued for the service of the navy was the Bank of England. I have not found a single instance, where any treasurer of the navy, has lent to any private individual any part of the public money; except that of the noble defendant within the bar; not even those who were treasurers of the navy before the resolutions of the House of Commons were passed.

My lords, when Mr. Barré quitted the office of treasurer of the navy, the noble defendant, who had some years before begun the course of his public life, and had been attached to lord North during his administration, down to the very close of it; connected himself with that prodigy of talents and eloquence, whose sun was just then beginning to rise, which has now prematurely set, carrying with him the admiration of many, the regret of multitudes, the universal acknowledgement from all, that as to personal political purity, he was untainted. Under the auspices of Mr. Pitt, the noble defendant succeeded Mr. Barré in the office of treasurer of the navy; and he was bound, if any thing could have bound him, by the same obligation which bound Mr. Barré, to the correct and just administration of his office.

My lords, the noble defendant, at the time he came into the office, appointed Mr. Douglas his paymaster.—A gentleman who had exercised the same office under several treasurers of the navy, for a succession of almost eighteen years, with a very short interruption under Mr. Barré. It may be material here to observe, that if the representations and interest of the defendant could have succeeded with Mr. Barré, or if he had had any claim upon him whatever, we know that the defendant had so good an opinion, at so early a time, of Mr. Douglas, that he would have taken pains to recommend him to Mr. Barré as his paymaster.

My lords, we charge, in the first article of the impeachment, that the noble defendant, during the time that Mr. Douglas *was* his paymaster, and previous to an act of parliament, to which I shall soon have occasion to call the attention of your lordships, did, in breach of his duty, possess himself of a certain sum of public money. My lords, I beg your lordships here to consider the situation in which the Commons have stood, with regard to the articles they have exhibited to your lordships.—At the time they were exhibited, the committee appointed to prepare those articles, were not in possession of great part of the evidence which I shall now have the honor to open to your lordships.—We drew the charges as it were in the dark; but framed them in such a manner as that the evidence might be applied to some of the articles, or rather some parts of the charge, which we have adduced against the noble defendant. With regard to the evidence also, I beg your lordships to con-

sider the difficulties we have had to encounter.—That the lapse of time from the date of the crimes which we charge upon the noble defendant, in the first article, is no less than twenty-four years; that many of the actors in these scenes have long since slept in their graves; that much of the written evidence, which we ought to have been able to collect, has been purposely destroyed or put out of the way; that much has been accidentally lost, and that we are driven to living witnesses, who were his accomplices, in order to establish before your lordships the guilt of the person whom we accuse. But our difficulties are I trust, surmounted: and that we shall be able to lead your lordships, in the outset, indeed by a circuitous path, by small steps, but every one of which shall bear you; afterwards by a more plain and open road, to an eminence, from whence you shall see, with one glance of the eye, all the transactions of the noble defendant during the course of eighteen years: and the result shall be, to establish in your minds an irresistible conviction of his guilt.

My lords, if we have conquered our difficulties, we cannot however conquer our feelings; and it is a most painful task which I am now about to undertake. For my lords, your lordships perhaps may know,—if not, we know, and we shall prove, that in the course of the last spring, the defendant did, in a moment of forgetfulness, write a letter, addressed to the commissioners of naval inquiry; which letter was, by motion, laid upon the table of the House of Commons; which letter does in substance contain a denial that, during the paymastership of Mr. Douglas, he made either interest or advantage of the public money. The noble defendant is a man of sense and education; he is elevated, by the favor of his majesty, to a situation in which he passes sentence, in this House, as a judge, even in cases of life and death, upon his honor: yet, my lords, that noble lord, in a moment of forgetfulness, has said, that he never did that, which we undertake to prove he did. He has said it, and subscribed his name to the assertion, and added, that he was ready to confirm it by the solemn sanction of an oath.

My lords, is it not then a painful duty that I have to execute? and could any thing but a sense of duty overcome the feelings with which I must be actuated at this moment?

My lords, I charge that the noble defendant took this money, and used it for his own advantage. Your lordships know that I am now adverting to the first article, which states that lord Melville had possession of a certain sum of 10,000*l*. Now I refer your lordships to the tenth article; for it is necessary that we should take those two articles together. That 10,000*l*. as your lordships will find hereafter, being involved in the 27,000*l*. which is charged in the tenth article, as I shall explain to your lordships presently.

First, however, upon the first article itself,



—How are the Commons prepared to prove that article? and what is the evidence that is to be adduced to you in support of it?—Why, my lords, no less than a confession which I heard made by the defendant himself in the House of Commons; where he avowed that he had taken 10,000*l.* of the public money.—He at the same time asserted that he had not used it to any purposes of private profit or advantage: but he also told the House of Commons, that he was determined never to reveal to any human being what the application of that 10,000*l.* was. These expressions, uttered in the face of the House of Commons, may now, perhaps, be to be repeated in the face of your lordships and his country—*that*, I say, was an impeachable offence:—neither he, nor any man breathing, has a right to set himself above the law. There is no law which could authorize the payment of that money. He tells you he did it illegally; he tells you he did it for your benefit; and yet he will not tell you to whom, or for what service he paid it.

I was apprehensive till within a very short time of the moment in which I am addressing your lordships, that we should be obliged to go into a very elaborate and detailed proof relative to this 10,000*l.*; but I am happy to inform you, that a circumstance has come to my knowledge within a very few hours, which I trust will cut short our proceedings. My lords, while we who are the managers, have been toiling and labouring in search of proof, all hands engaged, working out our course, and scarcely sure that we had weathered the cape; the learned counsel, who, as may well be imagined, can sail nearer the wind than we can, had got a shorter cut to the haven to which we wished to go.—My lords, I will take advantage of their chart.—They have made a discovery; and that, which to prove we thought would take a considerable time, will now come within a few short words.—My lords, we know that, within these two or three days, the receipt of a person for a sum of 10,000*l.* which was paid by the noble defendant to that person, was in the possession of his counsel.—Is this the 10,000*l.* that he acknowledged? if it is, I hope that now, at least, he is not actuated by those motives for concealment which he professed last year; and that neither public duty, private honour, nor personal convenience, will interfere with his exposing to you the paper which contains the whole transaction.

My lords, as to public duty; the time is long passed. There might have been motives for concealment: but public duty cannot be brought as a plea, why the noble lord should not now tell you the truth. Besides, who is it that demands the explanation?—Why, the public: and if he has done a duty towards that public, let it be known. He may then be acquitted of the charge, and there be an end of the matter. As to private honour; I strongly suspect that the name to be found to this re-

ceipt, is that of one \* who has been long since dead; who was engaged in large mercantile transactions in this country, and whose affairs were such as ultimately to be exposed to a commission of bankruptcy. Private honour therefore cannot interfere to prevent the revelation. And as to personal convenience; it will be most convenient that his counsel should be able to produce to you a paper, which, if it carries upon the face of it a justification of the conduct of their client, will be the means of his acquittal on this charge. Therefore, neither public duty, private honour, nor personal convenience, can interfere with its production; but justice requires it should be produced.

My lords, we not only charge that the noble lord was possessed of this sum of 10,000*l.*, but we charge also that it continued in his possession after another change had taken place in the navy pay-office, and contrary to the provisions of an act of parliament. We know, not only that he confessed it in the House of Commons, which confession I heard,—not only that he made an undisguised confession of it there, but that he confessed it to a person whom I must now name for the first time to your lordships, Mr. Alexander Trotter. We know, that soon after he had appointed Mr. Trotter paymaster of the navy, he confessed to him that he at that time had this sum in his possession. It will be proved, then, by his own confession before the House of Commons, and by his confession to his own agent. But, my lords, notwithstanding we can prove the first article upon the defendant by the means I have suggested, still his assertion is unfounded: for we shall further prove, that he never was possessed of any one sum of 10,000*l.* which he could have applied to public purposes; or at least, if he was, that this is not the sum of which he so acknowledged himself to have been possessed. But that this sum, so acknowledged by him to Mr. Trotter, in the year 1786, and so acknowledged in the House of Commons in 1805, was compounded of fractional parts of other sums to a large amount, not one farthing of which ever was, or could have been, applied to any public service. We shall also show, that the only 10,000*l.* he ever did take out of the office at any one time, was a sum which he could not possibly apply to any public purpose; nay, that at the time he took it, he was not a servant of the public; and had no more pretext for taking possession of the money then, than he would have now, for taking any of the balances belonging to the navy pay-office in the Bank, and applying them to electioneering purposes in Scotland, or elsewhere.

I must now beg your lordships' attention to a detail of this matter, which in some circumstances is very minute; which I hope I shall be able to make clear; which is capable of

\* Mr. Atkinson.



clearness, if I am but able to show to your lordships that which I see in my own mind.

On the 19th of August, 1782, lord Melville, then Mr. Dundas, was, for the first time, appointed treasurer of the navy. On the next day, the 20th of August, the sum of 1,000*l.* was paid by Mr. Douglas into a banking-house, with which the noble lord had then, and has still, an account, on his behalf.

Now, my lords, who was Mr. Douglas? for it is necessary we should show explicitly by proof who *he* was. We shall show he was paymaster of the navy, appointed under proper authority by Mr. Dundas, but otherwise unconnected with him in private agency or any other way: and that every act he did at the time, and afterwards, as paymaster of the navy, had the sanction of the noble defendant. I do not believe that the 1,000*l.* so paid on the 20th of August, 1782, was any part of the public money, but upon the first establishment of the connexion between the parties, a payment of 1,000*l.* was made. Early, however, in November of the same year (1782), a payment of a different description was made into the banking-house of Messieurs Drummond, on behalf of the noble defendant. It is necessary I should state to your lordships, that in the then mode of conducting the office of treasurer of the navy, the paymaster of the navy was in the habit (after the representations had been made to the treasury upon which the warrants for money were granted upon the Exchequer), of going to the Exchequer, together with a Bank clerk (for the Bank was *then* the usual place of deposit for this money), and having presented his warrant, the sum of money ordered to be paid to the treasurer of the navy was delivered to him, in such way as he chose to take it. He might have it all written to his credit in his Bank-book, if he pleased; and carried to the account of the treasurer of the navy: or he might put some in the Bank-book, and take some away in Bank-notes or cash, and place it where he thought fit.

It so happened, that on the 6th of November, 1782, Mr. Douglas had a payment to receive at the Exchequer, to the amount of forty-five thousand pounds. Mr. Douglas chose to have 40,000*l.* written into his bank-book, and to take 5,000*l.* away in bank-notes. Now such a transaction had often taken place before. Former paymasters of the navy, and Mr. Douglas also in the execution of that office under other treasurers of the navy, had frequently taken sums of money in bank-notes, and had the balance written into their books: but as far as we have been able to trace it, all the sums so subtracted from the aggregate sum imprested to the treasurer of the navy were uniformly sums of three thousand pounds each, which were set apart to pay Exchequer fees. This 5,000*l.* which Mr. Douglas so took from the Exchequer and put into his pocket, was never carried into any public account whatever. It was carried to a

place, according to the statement made by Mr. Douglas, which, as I shall have the honour of submitting to your lordships, was also a place of safe custody, one in which he had a right to deposit it. It was carried to the *iron chest* of the office.

Now, my lords, in the ancient constitution of this office, there was,—as, when there were large payments in specie and before paper circulation was common, it was necessary there should be; and there remained for a great number of years after a paper circulation was common,—a place of safe custody for the deposit of specie, which was this very iron chest. And in the memory of several persons in the navy pay-office who are still living, it was used to keep cash until an escort, or waggons, or whatever else might be necessary for its transport, could be provided to carry such money to the out-ports. But in the course of time, as payments in specie became more rare, the iron chest of the office was diverted from its original purpose, and destined latterly more to the safe custody of particular papers and books, and more especially of the floating securities held by the treasurers of the navy for their own profit and emolument, than any other purpose. But, however, being a public chest, and being, as the noble lord has stated in his evidence before the naval commissioners, a part of the constitution of the office, it was perfectly proper and legal that these notes should be there deposited. For you will find there were five notes of 1,000*l.* each. Mr. Douglas also properly, in the execution of his office, opened a public account with this iron chest. That public account contains the whole history of the transactions of Mr. Douglas, as between the iron chest and his principal, to the time of his quitting the navy pay office in 1783.

My lords, the 10,000*l.* for which the noble defendant is in possession of the receipt, was entered in that chest account, and the draft for the money was drawn payable to a person by the name of Jellicoe, whom I must hereafter have the pain of introducing to your lordships.—My lords, one of these five bank-notes for 1,000*l.* found its way immediately into the hands of the treasurer of the navy, and was paid by him to his private account at Messieurs Drummonds. Not only so, but at the time the 1,000*l.* was paid in, he took 400*l.* away; 600*l.* only remained at Drummonds, the balance was paid to him in small notes and cash for his own private use. I have in my hand the identical note for 1,000*l.*

My lords, perhaps the noble defendant may say, Mr. Drummond's was a place where I had a right to deposit public money—"You had a right to deposit public money there, but not to deposit it there for your own interest and advantage?" How do I show that it was placed there for his interest and advantage. By showing that he took certain specific parcels of it in small notes and gold, and carried it away in his pocket;



by showing that whenever he overdrew his account with Drummonds (as happens to most men at some times with their bankers), he was charged with interest upon such over-payments. This happened in November, 1782.—In December of the same year, another sum was subtracted by Mr. Douglas in the same way, and other three notes of 1,000*l.* each, were also carried to the account of the iron chest. It so happens also, that one of these 1,000*l.* notes so paid into the iron chest by Mr. Douglas, went to discharge a private debt of lord Melville's; for it was paid to the house of Moffat and Company, in discharge of a private draft, drawn by Mr. James Newbigging, of Edinburgh, upon lord Melville, then Lord Advocate of Scotland.

My lords, if we show these things, which we can as clearly as that the sun shines, we can only lament the forgetfulness of the noble lord, at the time he wrote his letter of March 1805, to the commissioners of naval inquiry. But further, between the month of August, 1782, and the 10th of April, 1783, subtractions were made by Mr. Douglas, in the manner in which I have stated these two subtractions to have been made, and notes or cash were carried to the iron chest to the amount of 16,000*l.*; only 3,000*l.* of which ever found their way into any official book, or were paid for any official purpose whatever. We shall show your lordships, the two sums of 1,000*l.* each, so identified: and that 13,000*l.* out of 16,000*l.* entered in the chest account kept by Mr. Douglas, and in his own hand-writing, was paid to the noble lord.—The remaining 3,000*l.* was paid to Mr. Jellicoe for official purposes. But, my lords, how fortunate it is that this discovery, which I stated in the earlier part of my address to you, has been made, and that we shall be able to see this paper; for I am sure if one part of these papers is in existence, all the rest must be; and we have given notice to the defendant to produce them. They must be in his possession, and I trust will be produced before you. How simple and easy the transaction will then appear, which otherwise I should have been obliged by long deductions and inferences to have brought before your lordships. Mr. Douglas in his account states, that he took receipts from the noble lord, for every sum he paid him.

Having so received this sum of 13,000*l.* lord Melville quitted the office of treasurer of the navy. Another political revolution took place, other persons succeeded to power, and the noble lord no longer continued in the situation he had then held but for a few months. But when he went out of office, he was debtor to the public, as the Commons are prepared to prove, in the sum of 13,000*l.* Being out of office, what did he do? Why, my lords, after he was out of office (and I beg your lordships attention to this), after he was out of office (for lord Bayning succeeded lord Mel-

ville on the 10th of April, 1783, *his* patent bears date on that day, and the patent of the successor is a revocation of the patent of his predecessor); on the 14th of April, four days after he went out of office, Mr. Douglas drew to the order of Mr. Jellicoe for the sum of 10,000*l.* of which 10,000*l.* the noble defendant possessed himself. The application of which 10,000*l.* I will presently show to your lordships.

I have heard the noble defendant say, that during the time he held the office of treasurer of the navy, he held other confidential situations in government, which made it necessary for him to disburse money so secretly, with so much care and circumspection, that he would not tell even his colleagues what he had done with it. But your lordships will recollect that during his first treasurership he formed no part of the administration: he was simply treasurer of the navy, without any responsibility as to the government of the country. Now an individual so unauthorized, if he had been treasurer of the navy, but who before he did this unauthorized act had ceased to be treasurer of the navy, takes this ten thousand pounds into his own pocket; and then he boldly tells you, he was the servant of the public, and this was for the service of the public, to which public he will never reveal it. To whom, after having so possessed himself of it, did he pay this ten thousand pounds? what became of it? Why, at that time there existed in the city of London, a house of high mercantile reputation, under the firm of Mure and Atkinson. Mr. Atkinson had, some years before, had great connexions with government, in contracts and otherwise; and was extremely well known, I believe, both publicly, in mercantile concerns, and also privately to the defendant within your bar.

This Mr. Atkinson, however, be it noted, (that we may not leave any one thing out which may be supposed to bear upon the case);—this Mr. Atkinson, long before the loan of this ten thousand pounds by lord Melville, had ceased to be a government contractor, or to have any connexion with government at all.—I know, this is not of importance to the substantial part of the case, but I beg to state it by the by. This gentleman was accommodated with the sum of ten thousand pounds by the ex-treasurer of the navy.—Now, was the house of Mure and Co. a place for the safe deposit of money? Was it for safe custody that the ex-treasurer of the navy paid it into Mr. Atkinson's house? Or, were the circumstances of that house such, as to make the loan of ten thousand pounds an extremely convenient thing to them? We can show that the circumstances of that house were such, at that time, as to make the loan of ten thousand pounds of the most essential importance to them: and, if we prove *that*, I think we show the reason for which that 10,000*l.* was advanced: which was, to ac-



commodate Mr. Atkinson, and if that accommodation can be proved, can the defendant say that he indirectly received no advantage from advancing to a friend with whom he was connected, the sum of 10,000*l.* to extricate him from mercantile difficulties?

My lords, we have an account of Mr. Atkinson's. The lord advocate of Scotland (as lord Melville was at that time) is credited in that account for the sum of 10,000*l.* That, however, makes but one item in the account between lord Melville and that house.—There are twenty-nine entries, of which we shall be able, I believe, to substantiate twenty-one, by having the original papers upon which the drafts were drawn, or the receipts given;—and out of those twenty-one, eight have the hand-writing and signature of Henry Dundas. Added to this the noble lord is in possession, at least his counsel were a very short time ago, of the receipt given for this 10,000*l.* Now, what else happened after Mr. Dundas was out of office, in the course of the summer of 1783? Why, in the course of that summer, difficulties occurred for the payment of the bills which became due upon his ex-treasurership. Having become debtor, by the addition of this 10,000*l.* to the amount of 23,000*l.* so large a subtraction from public money made it difficult to conduct the affairs of the ex-treasurership: and those difficulties were relieved by the defendant in his private capacity. In the first place, a payment was made in reduction of this 23,000*l.* of 1,000*l.* by a person of the name of Gray; who is also dead and gone, and whose papers are also many of them either lost or destroyed. But Gray was connected in money transactions with Mr. Dundas: he was in the habit of advancing small sums in the course of business to Mr. Dundas; and at the time he died, we know that lord Melville was his private debtor: which private debt was afterwards duly discharged.

When I am talking so much of private debts, and private transactions, I do beg your lordships as a court, and individually; and even if I could, I would ask the noble defendant himself, to believe, that nothing in the whole course of this business is so painful to me, as the knowledge I have been under the necessity (together with my brother managers) of obtaining of his private affairs. First of all, they are matters in which no man wishes to meddle, or ought to meddle, without special necessity. In the next place, it is painful to state them publicly, as I am obliged to do. And, lastly, they are so mixed with his public concerns, as sometimes to lead one into much perplexity. And therefore, when I mention the private affairs of the defendant, I beg of your lordships and him to pardon me, for I never mean to do it but in the strict execution of my duty.

This Mr. Gray was a private agent to lord Melville. I have, under the hand-writing of the noble defendant, a letter addressed to his

paymaster, Mr. Douglas (dated in 1785, indeed), but which will establish the connexion in money transactions between him and Mr. Gray: who, though an officer in the navy pay-office, was nevertheless no sub-accountant, had no dealings whatever with public money; between whom and the treasurer there could be no transactions with public money. In the year 1785, Mr. Dundas wrote to Mr. Douglas, to inform him that, if he wanted any money in a particular way, which Douglas had mentioned to him, "upon applying to Mr. Gray he will supply you to the extent of 4,000*l.* or 5,000*l.*" Signed Henry Dundas. Which establishes the agency of Mr. Gray for Mr. Dundas.

But, my lords, to resume. In June, 1783, Mr. Gray made a payment into lord Melville's ex-treasurership account at the Bank of 1,000*l.* which 1,000*l.* came from no public source, for all the public sources are open to our inspection; he had no credit upon any public source, and therefore it could come from no source but a private one. This payment reduced lord Melville's debt to 22,000*l.*: but the difficulties were not relieved: for in the month of July 1783, a victualling bill was presented by a man of the name of Toulmin, and there was but 3,000*l.* in the cashier's hands wherewith to discharge it. In that emergency what was done? Why recourse was had to Mr. Atkinson for the sum of 7,000*l.* Atkinson examined the account at the Bank, and finding that there was there 1,000*l.* besides the 3,000*l.* in the cashier's hands, he took advantage of the 1,000*l.* and paid into the ex-treasurership account at the Bank the sum of 6,000*l.* That went so far in liquidation of the debt. By subsequent payments Atkinson reduced lord Melville's debt to 7,600*l.*; and at 7,600*l.* it stood until lord Melville, for the second time, became treasurer of the navy, in January 1784.

Another memorable political revolution had taken place; and the treasurer of the navy was again in his seat debtor to the public 7,600*l.* New difficulties occurred in the management of the ex-treasurership; and the ex-treasurer was obliged to look about him for assistance, he had indeed a friend just come into office, to whom he might apply. Henry Dundas was there, and surely the old Henry Dundas might borrow of the new. It was indeed like raising money upon his own flesh and blood; but with whom could he take liberties, if not with himself? Those liberties he did take, and he made unauthorized transfers to the amount of 6,000*l.* from his second treasurership account to his first.

It is here necessary to inform your lordships, that according to the custom of the office, transfers were sometimes made by authority from the account of the treasurer in office to the ex-treasurer. But the transfers of which I speak, were unauthorized; for which no legal authority can be produced from the navy board, whence all legal authorities



to make such transfers must issue. After these transactions lord Melville owed 1,600*l.* only to his first treasurership, and 6,000*l.* to his second. What did he then do? He took the produce of two drafts of 2,000*l.* each, upon his second treasurership into his own possession, and converted the money to his own use.

The second of these drafts was drawn on the 25th of May 1785. A day most memorable in the life of the noble defendant; because it was on that very day that he so took the public money, that he Henry Dundas was ordered by the House of Commons to carry a bill to the Lords, of which he had been the mover, "For the better regulation of the office of treasurer of his majesty's navy."

—On that very day he took 2,000*l.* of the public money, and paid it into his account at Drummond's; which account was then overdrawn to the amount of 2,500*l.* Thus lord Melville again became debtor to the public in the sum of 11,600*l.*—We have, exclusive of the bank-notes which I before stated to your lordships, these two bank-notes each for a thousand pounds; and I may as well mention here, that we have the ten notes for 1,000*l.* each, which were taken from the Bank, and paid immediately into the hands of Smith, Wright, and Payne, on account of Mr. Atkinson, as well as the notes which went to the Bank from Mr. Atkinson, in discharge of that payment.

Then comes a payment which, if there existed any doubt upon the matter, would put it beyond all dispute, for we will show to your lordships, that, in discharge of a part of this debt of 11,600*l.* a payment was made of a quarter of his own salary into his public account, in reduction of his debt to the public; we will prove this payment by an incontestable witness. This again reduced the debt to the sum of 10,600*l.*

In this situation the account stood at the death of Mr. Douglas.—Mr. Douglas died in December 1785. Here, my lords, I beg leave to state to your lordships, that all the public accounts at the Bank, all the public accounts at the office, and every other account collated, compared, and taken in every different way in which they can be stated; all give the result confirming the evidence which I have opened to you. That the office books and Bank books which cannot lie, all prove to demonstration that such was the precise deficiency. If I have been able to carry your lordships through the labyrinth in which I have been so long engaged, and to show you that which I see, I think you now perceive that this 10,600*l.* was no specific, single sum, taken for any service whatever, either public or private, but the balance composed of fractions of different sums, taken by the noble defendant, at different times, and, as I have shown you by exhibiting either the payments or repayments, each was taken for the private purpose, advantage or interest of the defen-

dant.—But, my lords, how did the noble defendant act when Mr. Douglas died? When this deficiency was known both to him, and to those who succeeded Mr. Douglas; did he call upon the executors of Mr. Douglas to make it good? Did he, after examining the different accounts, and finding such deficiency in the public money, call upon those executors to pay that money, and charge him with having had it? No such thing. No. The only balance called for from the executors of Mr. Douglas, was for exchequer fees, which always form a distinct fund. He gave to Mr. Douglas's son, who will be produced before the Court, a receipt for those exchequer fees. The general balance was in the Bank when it was delivered over to Mr. Douglas's successor: who found it deficient, and upon that deficiency being stated to the defendant, the defendant said, "that deficiency is mine, so much I owe to the public." If then he acknowledged the terminating balance of this account (which was so composed as I have stated to your lordships) I say, he acknowledged the whole of it; and it is impossible that he can show to your lordships he made any public use of the money.—My lords, was it in tenderness to the memory of Mr. Douglas, that the noble defendant acknowledged the sum of 10,600*l.*? No. Mr. Douglas's memory required no such tenderness.—Mr. Douglas's character is without stain. I can call a variety of witnesses, some from your lordships' own body, to show, that he was an accurate, honest and conscientious servant of the public, a faithful servant to those who immediately employed him. I have the testimony of the noble lord in his early opinion of him; I have it in the recommendation he gave of him to lord Bayning, in a matter of civility which passed between him and lord Bayning.—Lord Bayning on going into the office, asked what arrangement could be made agreeable to Mr. Dundas as to the servants of the pay office, who had faithfully discharged their duty? Mr. Dundas's answer was: "You have done the only thing I could have desired, by appointing Mr. Douglas your paymaster."

The defendant no doubt has in his possession all the papers and accounts of Mr. Douglas. Let them be produced, and then we shall see whether the noble lord can cast any imputation on his memory. We know he cannot. To all this, my lords, we shall add the evidence of Mr. Trotter; and the evidence of those who heard lord Melville make that extraordinary and impeachable declaration in the House of Commons, that he was determined to keep the affairs of the public from the knowledge of the public themselves. And thus we shall have completely proved the first and tenth articles. Perhaps in a detail so extensive, and so intricate, there may be some links of the chain which I have not taken up; but if I have touched all that exist, there is such a chain forged by the noble defendant



for himself, and with such a shackle at the end of it, as he will be utterly unable to break.

My lords, we now come to the second division, in point of time, of the charges exhibited against lord Melville, I mean that which took place after Mr. Trotter was appointed paymaster of the navy. But I must take your lordships back, for the sake of perspicuity, to that new epoch which had been created in the Navy pay-office, by the passing of an act of parliament, which obtained the royal assent, I believe in the month of June, 1785, "For the better regulation of the office of treasurer of his majesty's navy."

My lords, when I am speaking of the noble defendant, and of those persons connected with him, upon whom it is my duty severely to animadvert; I wish to say every thing that can go to the illustration of their good deeds in the office which they executed, the one as superior, and the other as subordinate: and so far from imputing any blame to them, for that which did not deserve blame; to give them all the credit, and all the praise which is their due during the time they continued so connected together: And therefore it is with satisfaction I say, that during the time Mr. Dundas was treasurer of the navy, several most beneficial regulations took place in that office. That several acts of parliament were passed for the protection and defence of the unprotected and defenceless: I mean the widows and orphans of the brave seamen of this country, and for the allotment of wages to the wives and families of those who were fighting its battles. Above all, that enactments were made through the instrumentality of the defendant, which have saved a number of lives from public execution. The act of parliament to which I here particularly allude, makes that crime almost impossible, which was theretofore so common, namely, the forgery of seamen's wills, and other instruments to obtain their pay. For that, and other acts which I have enumerated, and others which I may perhaps have forgotten, undoubtedly the noble lord demands the thanks of his country, and the gratitude of that meritorious class of men.\* And I believe lord Melville will allow, that Mr. Trotter gave him material assistance in the detail of all those plans.

My lords, Mr. Trotter is a person who will be frequently mentioned hereafter. His name has been much in the public mouth, and much to the discomfort and dissatisfaction of those who are nearly connected with him; and as I shall have occasion to speak much of his misdeeds, I think it right here to state, that he is a person, who, in early life, conducted himself with the greatest possible propriety: that except in the transactions of the Navy pay-office, I know nothing, nor, I believe, does any man know any thing to his disadvantage;

that he was employed by the treasurer who succeeded lord Melville; that having been afterwards dismissed, he was recalled to his employment by a succeeding treasurer, and continued in it up to the very moment of the Resolutions of the House of Commons on the 8th of April, 1805. Beyond that, I have heard lord Melville, even after the greater part of these transactions were made known, and after the degradation to which Mr. Trotter's conduct, coupled with his own, had subjected him, honourably, generously, and manfully declare, that Mr. Trotter, notwithstanding the cloud which hung over him, was a meritorious man, and one who deserved to be trusted. My lords, farther, if there can be any thing to add—and in such a case nothing ought to be omitted—a man more beloved by his relations, and those connected with him, as far as I have had an opportunity of judging, I do not know. One of the strongest testimonies in favour of any man. My lords, Mr. Trotter is to give you most material information upon the transactions of the defendant; whose transactions are so intimately connected with his own, that I have heard lord Melville say, there is no human being can tell you any thing of them but Mr. Trotter and himself. In consequence of such a general impression, your lordships concurred with the other branches of the legislature in indemnifying Mr. Trotter from all criminal prosecution on account of his own misdeeds;\* that he might be rendered a witness competent to speak upon this trial. And it is a very fortunate circumstance for Mr. Trotter, that every thing he will say to your lordships will be confirmed by undeniable testimony. By documents which still exist; and that in no one

\* See the statutes enumerated in 2 Russel on Crimes and Misdemeanors, 1593, note.

\* This object was accomplished by the stat. 45 Geo. 3rd, c. 126. The proceedings against lord Melville occasioned also the enactment of the stat. 46 Geo. 3rd, c. 37, by which it is declared, that a witness cannot by law, refuse to answer a question relevant to the matter in issue, the answering of which has no tendency to accuse himself, or to expose him to penalty or forfeiture, of any nature whatsoever, by reason only, or on the sole ground, that the answering of such question may establish, or tend to establish, that he owes a debt, or is otherwise subject to a civil suit, either at the instance of his majesty, or of any other person or persons. For a history of these statutes the reader is referred to 5 Hansard's Parliamentary Debates, 719, 728, 751, 767, 792, 798, 812, 821, 825, 828; 6 Hans. Parl. Deb. 159, 166, 169, 179, 222, 234, 244, 342, 360, 362, 401, 421, 450, 483, 486, 502, 524, 752, 768, 899, 950. See also the proceedings against Mr. Trotter for refusing to answer certain questions put to him by the committee of the House of Commons appointed to draw up articles of impeachment against lord Melville, 6 Hans. Parl. Deb. 353, 359.



statement I have heard him make, is he not borne out by some corroborating witness of credibility, or some book which cannot impose upon you.

My lords, having said thus much, I have to add, that an act of parliament passed in the year 1785, "for the better Regulation of the Office of Treasurer of his Majesty's Navy." We should have simply put in this act, and stated to your lordships the conduct of the defendant, without making a single comment upon the act itself. But, my lords, to my utter astonishment, I heard the noble defendant say—and my ears still tingle with the sound—that he was yet to learn in what particular he had violated the spirit or the letter of that act of parliament. Good God! my lords, is not that act plain? If that act of parliament be not plain—if he who runs cannot read it, you may as well burn and destroy all your statutes. There is not one which will not admit of a double interpretation, that may not be evaded by a quibble. *Magna Charta* itself may be misconstrued—the *Habeas Corpus* act—the act of Succession to the Crown of these kingdoms—the Bill of Rights—may admit of a double interpretation. Nay, my lords, I had almost said that the law, delivered in all the magnificence of Heaven, and written with the finger of God himself on the table of stone—"Thou shalt not steal"—might be explained away. I say, this act is plain; but dare I ask the noble defendant, who was the parent of this act; who nourished and brought it to maturity; whose child it was; which had the sanction of the great name of his departed friend (whose powerful voice was raised to instruct the House of Commons, that he, Mr. Dundas, was the man of all others to carry into execution plans of reform; pointing him out to the selection of the House of Commons to prepare that bill; having prepared it, as he did, knowing its very embryo, and carrying it through all its stages)—dare I ask the noble defendant, whether he meant, at the time he penned that act, to frame the letter with a view to evade the spirit? I dare not ask the question. But if, unhappily for the cause of justice, and his country, the noble lord had sunk into the grave before the arrival of this day,—if his memory had been piously enrolled amongst the number of those

*Qui sui memores alios fecere merendo;*

and a successor of his, detected in the practices now charged upon him, had dared so to interpret the act of parliament; surely your lordships, in the spirit of those counsellors of Spain, who, after the demise of their chief in cases of perplexity, would exclaim, "Let us consult the genius of Philip the 2nd;" in such a case would have said, "Let us consult the genius of lord Melville. Let us see how he would have interpreted this act, the letter of which you dare to say you have not violated; and against the spirit of which you dare

to say you have not offended." But if we could go farther, and according to the wild but sublime superstitions of that country in which the noble lord was born, and as is sung in the lay of the last and most melodious of her minstrels—

"That mighty words, and spells have power,  
To call up sprites in planetary hour."\*

What incantations should we not have used! to what charms should we not have resorted, in order to have conjured up the ghost of the departed sage! and if happily from the result of our orgies there had appeared before us a form of comely manliness, somewhat impaired indeed, but rendered more venerable by age, with every symptom of remaining vigour, every mark of sound understanding; how eagerly should we have addressed him—"Tell us what was the spirit of thy law?" His answer must have been—"Reform—reform, by the most humane and efficacious means, by withdrawing all temptation to offend."—Should we not with equal eagerness have followed up our inquiry by saying—"Did not the letter correspond with the spirit of thy statute?" and with what indignation should we have received an answer such as this?—"Alas, in these regions there is no disguise:—at the moment I framed the act I was sinning against its principle; and I took care so to construct the letter, that although I continued in the constant violation of its spirit, if you had detected me, I defy you to have proved any infraction of its letter." We must have consigned his memory to that reproach it would have so justly deserved. We should have resorted to the statute and said—"Thine own self only hast thou deceived. In thine own chains art thou bound; thy reputation cannot escape from the load of ignominy thou hast brought upon thyself."—My lords, read the statute and see what it says. Is there any double interpretation to be put upon it? Can the learned counsel torture it to their purpose? We have amongst us the managers for the Commons, men of the greatest learning and most distinguished talents. Let them come to the argument with the learned counsel, if it be necessary. But simple and unlearned as I am, I throw down the gauntlet, and defy them. They can put but one interpretation upon this statute, which is, that lord Melville, from the time of its being passed, was bound to place the public money at the Bank, and no where else. That he could not withdraw it from the Bank, for one moment, except for navy services, without having broken, not only the spirit, but the letter of his own act of parliament. My lords, what did he do? He suffered his paymaster to withdraw the money from the Bank, and place it at a private banker's for his own private advantage. That which he did by his pay-

\* Sir Walter Scott's Lay of The Last Minstrel.



master, he did himself. He was bound to see that the servant he employed acted according to his public duty. But we go on, and charge, not only that he connived at his paymaster's making profit of the public money, but that he did so himself; and with that we shall close. But, my lords, let us look a little at this act of parliament, upon what it is founded, and what it says. It sets out by telling you, that the commissioners of public accounts had recommended so and so. Then the legislature meant to act upon that which the commissioners of accounts had recommended. They did so most effectually; by saying, first of all, that all the money should be paid into the Bank: and with regard to the money so paid in, the treasurer of his majesty's navy should be only a public accountant; and no longer a public banker: that no money should ever come into the hands of the treasurer of the navy at all: that it should be drawn from the Bank for navy services only, and under certain forms of drafts therein prescribed. The third section of that act of parliament says—"Be it further enacted, that from and after the first day of July, 1785, no money for the service of the navy shall be issued from his majesty's Exchequer to the treasurer of the navy, or shall be placed"—mind, my lords, "*or shall be placed, or directed to be placed, in his hands or possession*"; but the same shall be issued and directed to be paid to the governor and company of the Bank of England, and to be placed to accounts according to the purposes for which it is craved and issued." My lords, this section of the act was complied with from July 1785. From that date, the navy money has been entirely paid into the Bank of England from the Exchequer.

Now, I beg your lordships' attention to one circumstance with regard to the public money, and the manner in which it is again issued by the treasurer or his paymaster to his sub-accountants. Not one farthing ever stops with the treasurer, or his paymaster; but it is issued to the sub-accountants in order to its being paid to the various persons who furnish those things which are requisite for the use of the navy, and for the pay and so forth of the officers and seamen. Assignments are, for the most part, made by the navy board upon the particular funds in the Bank appropriated to each particular head of service: of which assignments there is a list daily sent to the Navy pay-office; and so much money may be drawn by the treasurer of the navy, or his deputy, under certain forms and regulations prescribed by the act, for the use of the particular branch upon which such assignments are made.

It may be here necessary to state to your lordships, that there are three distinct branches under which payments are made for navy services: the Pay branch, the Victualling branch, and the Navy branch. Those are the three great heads of payment. It so happens, that

assignments are made upon every farthing issued for the use of the navy and victualling branches; assignments are also made upon a part of the fund appropriated to the pay branch, but not upon the whole of it.

My lords, it is the duty of the treasurer, under the forms prescribed by the act, to crave money from the Treasury; which money is then paid by order of the Treasury from the Exchequer into the Bank: whence the treasurer cannot legally remove it, either by himself or his deputy, unless there be a navy service to which it is immediately applicable. The binding words are these: "Provided always that the monies to be issued unto the governor and company of the Bank of England, on account of the treasurer of his majesty's navy, shall not be paid out of the Bank, *unless for navy services*." Now, mind, my lords, the next word, which is most important. "*And in pursuance of drafts to be drawn on the governor and company of the Bank of England*," so that it is not a draft drawn in any particular form which would entitle the treasurer, or his deputy, to take a sum of money out of the Bank. No, it is only the knowledge of a navy service which immediately demands it. *Then*, in giving the draft, he fulfils the law. But if he gives the draft without having a service to execute, the law is broken. In the present case it has been broken, and highly broken: it has been violated and grossly violated.

My lords, I have heard it said by the noble defendant himself, that there is a difference between the assigned and unassigned balances. As if, after the passing of the act, he had the complete control over such assigned balances as were unclaimed. But would it not be the most preposterous thing in the world to maintain, that if there is an assigned, unclaimed balance, to the amount of 100,000*l.* which the treasurer, or his paymaster, by his experience knows will not be called for to its full extent, by giving a proper form of draft, he has a right to keep the difference in his own pocket? I maintain that every farthing drawn beyond what experience shows to be necessary, is drawn in breach and violation of the act of parliament.

But, my lords, what did the noble defendant do? how did he instruct his paymaster? he acknowledges having given permission to his paymaster to draw money from the Bank to be placed at his private banker's. Did he at the same time tell him, "Take care never to go beyond the assignments; for if you do we shall violate the law. But if you keep within them, we are safe?" Such instructions he never gave to his paymaster. Did he tell his paymaster, "there are two descriptions of balances at the Bank, the one of which is altogether assigned upon, the other not. Now mind, you do not draw for the purpose of placing money at your banker's upon that which is not assigned upon, but only upon that which is?" Did he know what the aver-



age amount of those unclaimed assignments was; and what boon he gave to his paymaster when he gave him this permission? Your lordships will perhaps be surprised to hear that the unclaimed assignments ordinarily amount to the sum of 140,000*l.* So that the treasurer was giving to his paymaster (reckoning the profit upon that sum at 5 per cent) 7,000*l.* a year, for the execution of an office for which the public allow only 500*l.* But I maintain there is no difference between assigned and unassigned money. They are equally the property of the public till claimed, and the act of parliament says, they both shall remain in the Bank till drawn out for navy services.

I presume your lordships would not allow that a paymaster had drawn out money for a navy service, if he drew out 8,000*l.* to purchase India stock in his own name, and that of Henry Dundas. I do not suppose that if a paymaster drew out a million of money, and put it into the hands of his private banker, when the assignments did not amount to above a fifth part of that sum, your lordships will say, *that* was for a navy service. And yet these things have occurred, and these things the noble defendant, I think, could not but know. Yet still he would shelter himself under the distinction of assigned and unassigned money. I think it is scarcely necessary to dwell any longer upon it. But if the plain wording of the statute, if the intention of parliament admitted of a doubt; if the legal exactness of the noble lord, who was bred in habits that would induce him to pay particular attention to the construction and wording of such an act, had left any uncertainty upon the subject, the learned counsel would not, I think, dare to avail themselves of it, and if they did, I think they would be brought to shame. I see my learned friend\* smiling at my simplicity, so may he smile upon an *honourable* acquittal of his client at the conclusion of this trial. I can assure him that I shall rejoice in common with every good man in finding that I have been deceived; but those smiles, I fear, will hereafter come through tears, *δακρυων γελασαςος*.

My lords, I say, in defiance of the learned counsel's apparent, I am sure not intentional, contempt of my reasoning, I have the authority of parliament itself on my side: that parliament has considered that which it has enacted: that, if you want an interpreter, you have one. What occurred last year? In the year 1805, as is perfectly well known, it came to light that a certain sum of 40,000*l.* had been applied by the noble defendant with the knowledge and consent of one of his colleagues for a public service not naval: its application was made a subject of parliamentary investigation. No defence was set up by any body, arising out of the legality of the proceeding. Nobody said, "they acted according to law."

\* Mr. Plumer.

No. It was said, "they broke the law for the public good; they are meritorious servants of the public, and deserve your thanks." One of them was open, candid, and ingenuous; he frankly avowed his deed. Not so the other. He could not help its being known: but what did he say? He said, "If Mr. Pitt had not told you this, I would not." "Now, if Mr. Pitt had not told you that this 40,000*l.* had been employed for the use of Boyd and Benfield,\* or you had not obtained the information through Mr. Long, you would not have known it; and then," he added, "what would you have thought of me, for having an additional sum of 40,000*l.* of the public money in my hands?" Why, I should not have thought much worse of you than I do now; but I should have thought that in proportion as the sum concealed was large, the responsibility of the person having so employed and concealed it was large also: that if information were requisite upon a sum of 10,000*l.* it was still more requisite upon one of 40,000*l.*; but if these unassigned balances were monies over which he had a control, no information could be demanded, and no indemnity was necessary. He had as much right to place it in the hands of Boyd and Benfield, as he had to permit Mr. Trotter to place it in the hands of Messieurs Coutts. And it can be shown, the assigned balance unclaimed always exceeded 100,000*l.* If his reasoning were correct, he had no occasion whatever for an act of indemnity. But an act of indemnity was passed for him, his colleague in office, and all concerned in that transaction. What does that act of indemnity say? It says that the application of this 40,000*l.* "was not conformable to law." Now if that statute were not in existence the thing would be as clear and manifest as the sun at noon day. But if there were a cloud or shade over it, that act has dispelled it. We have only to call upon the legislature for the interpretation of its own act; and if we are so dull, and ignorant, and stupid, as not to be able to decide what the Regulation act means, we have another act of parliament for our guide.†

My lords, if I have not succeeded in establishing my position in the minds of your lordships, I am sure those who come after me will be able to do it; but I flatter myself, that, in the apprehension of every person not wilfully blind, it is established, that no money can be legally drawn from the Bank of England, under the provisions of this act, except for immediate application to some navy service.

My lords, having this act before him, what did the noble defendant do? Why, in an examination taken upon oath from that noble person, before the commissioners of naval in-

\* As to this transaction, see the debate in the House of Commons on June 14, 1805, 5 Hans. Parl. Deb. 385.

† 45 Geo. 3, c. 126.



quiry, he confesses,—and not only confesses, but takes credit to himself for what he has done,—that circumstances induced him to give permission to his paymaster to place money at Messieurs Coutts's for purposes of official convenience, and also for the advantage and benefit of that paymaster. The question and answer are these: "Did you authorize the paymaster, in or about the year 1786, to draw the money applicable to naval services from the Bank, and lodge it in the hands of a private banker?" The answer of lord Melville is: "I cannot precisely fix the time, but I am certain that I did permit Mr. Trotter to lodge any money drawn from the Bank for public purposes in his private banker's hands, *during the period it was not demanded to the purposes for which it was drawn.*"

Now, my lords, *there* are two or three words, which raise the distinction between assigned and unassigned balances. How did Mr. Trotter conduct himself under this permission from the noble defendant? In the second article, we charge, that with the connivance of lord Melville, Mr. Trotter took large sums of money from the Bank, and lodged them in the hands of a private banker. Assigned or unassigned, was matter of no consideration with him; navy, pay, or victualling, he took money indiscriminately from each of those heads, and placed it at Messieurs Coutts's. He drew it out from Messieurs Coutts's in the same manner without the smallest regard whatever to navy service. All this he will state to your lordships.—Did he do this to any considerable amount? We can show your lordships every month, from the beginning of these transactions down to the month in which he quitted the Navy pay-office, to what amount. I will just now only state to your lordships, that he began with 10,000*l.*, then went on to 20,000*l.*, then, in 1795, to 101,000*l.*; after that he dealt with so large a sum as 490,000*l.*, and, at the time lord Melville went out of office, the last balance in his hands amounted to 290,000*l.* Did lord Melville ever make any inquiry how he was using the public money? No; it never once struck him, it seems, that what he had permitted was improper; nor did it occur to him to inquire to what extent Mr. Trotter did it. And yet it was a matter of great importance to him to know how matters stood; because not only his fortune, but his character was at stake. Still he made no inquiry. Did any thing bring it to his notice? I shall show by-and-by, that many things must have brought it to his notice, and that it is impossible he should not have known at different times the sums Mr. Trotter had out.

My lords, we further charge, that the public money was exposed to great risk of loss, in being placed wholly at the disposal of Mr. Trotter. It was nominally at Messieurs Coutts's, for the purpose of carrying on the business of the office; yet I shall show that it was any where, almost, but at Messieurs

Coutts's; and I shall show instances wherein great loss was actually risked. That at one time Mr. Trotter, having bought a large quantity of navy bills, they fell to so great a discount, that he would not sell them; but applied for assistance to a gentleman of the name of Sprot, who lent him a considerable sum to supply the deficiency. There the public money was not only exposed to loss, but there was a temporary loss upon it; and Mr. Trotter, supposing he had not had other resources, and had been obliged to sell his navy bills, would not have been able to make good the deficiency to the public.—By the assistance of Sprot he escaped unhurt, and the loss was retrieved. We charge, that the public money was withdrawn from the control of the treasurer of the navy. Whilst the money was in the Bank of England, it was always under his control. The revocation of the power of attorney, granted to his paymaster, immediately put it under his control. If Mr. Trotter died, or absconded, or failed; all the money in the Bank of England, or in the hands of the sub-accountants, vested immediately in the treasurer of the navy. But when Mr. Trotter had put it into the hands of a private banker, it was under *his* control, and that of nobody else. Ask Mr. Antrobus, or any other banker; they could not possibly have answered any draft for this money, except that of Mr. Trotter, or his executor, or assignee. He might have carried the money where he pleased: lord Melville could not have prevented his doing so: and therefore by giving this unlimited confidence to Mr. Trotter, he abandoned the custody of the public money.

My lords, the public money was still further exposed to risk of loss, and put at a still greater distance from the control of the proper officer: for *that* trust which lord Melville had delegated to Mr. Trotter, Mr. Trotter delegated to others; with whom he left blank drafts, signed, to be filled up for the sum wanted in his absence. One or two instances can be produced, I believe, wherein that second person beyond the treasurer of the navy, put those blanks into the hand of a third person: so that there was no end of the extent to which he had given Mr. Trotter power to draw,—of the extent to which he had abandoned his duty; there was no end of the violations both of the spirit and letter of the act of parliament. Proofs of what we have charged are abundant.

My lords, there was a curious sort of defence produced by the noble lord before the naval commissioners. I will read it from his examination, which we shall produce in evidence to your lordships. The question asked by the naval commissioners is this: "What circumstance induced you to give such permission to the paymaster?"—"An opinion to which I still adhere, that if the whole monies necessarily drawn from the Bank, in pursuance of orders from the competent boards, were lodged in the hands of a respectable



banker, under the control of the paymaster of the navy, that it would add more facility to the conduct of the business of the office in the multitude of small payments to be made, then if the money were deposited according to the constitution of the office, in an iron chest. I likewise had it in contemplation, that in the receipt of these various small payments, made to such a variety of persons, they would be less liable to be imposed upon by that mode of transacting the business, than if they were each to receive drafts for such small sums upon the Bank, at such a distance from the office, after its removal to Somerset-Place."

Now, my lords, where a thing is acknowledged, and a motive assigned for it, which can be proved not to be the true one, the suspicion must be strong that the real motive is a bad one. Your lordships would imagine, from reading that part of the evidence of the noble defendant, that it really was necessary to have money at a private banker's; and that there were some mysterious payments which could be more easily effected through Messrs. Coutts, than through the Bank of England; that sailors were sent to the Bank of England for 9s. 10d., and such trifling sums; whereas, in the conduct of the office *then*, and in the conduct of the office *now*, never could any such thing take place. Your lordships would imagine, from that mode of defence, that the paymaster had half-guineas, and shillings and sixpences, always going through his hands; but not one word of that is true. The paymaster never pays a groat. Mr. Trotter himself never made a payment from the time he went into office, in 1786, till the time he was dismissed from it, in 1805. Your lordships would imagine, that drafts for very small sums were given, and that it was easier to get those drafts changed at Coutts's, than at the Bank. No such thing: for in all the three hundred and thirty-two drafts drawn by Mr. Trotter on the house of Messieurs Coutts for public money, there are only three for a smaller sum than one thousand pounds.

Then, my lords, as to the distance from the Navy pay-office to the Bank. Your lordships would imagine, these drafts were going all the day; that the Navy pay-office continued paying night and day, and that the vicinity of Mr. Coutts's shop, *therefore*, made it convenient. No such thing, my lords: the Navy pay-office shuts three hours before the Bank clerks think of closing their books. Then that assertion perishes under the feet of those who make it. But it may be asked, would not however some difficulty of some sort have been felt in the conduct of the Navy pay-office without the intervention of a private banker? None whatever; for after lord Melville went out of office, Mr. Trotter continued paymaster to his successor lord Harrowby. Mr. Bragge, now by the name of Bathurst, a member of the House of Commons, succeeded lord Harrowby; and Mr. Trotter was paymaster to

him also. At the expiration of a certain period, Mr. Bragge ordered Mr. Trotter to take the money out of the hands of his private banker, and to place it all in the Bank of England. Was there any embarrassment in consequence of this order? No; the Navy pay office was conducted with the same ease as it had been at the time the money passed through Mr. Coutts's house. But what was the difference in the conduct of it? After Mr. Bragge had, at the suggestion of a meritorious person by the name of Fennel (who, as I have been informed), called Mr. Bragge's attention to the act of parliament, and showed him how grossly it was violated), obliged Mr. Trotter to discontinue the practice, did he find any difficulty in conducting the office? None at all. But how did he vary his conduct? He varied it thus: If a list of assignments was brought to him by the sub-accountants on the Monday morning, for instance, saying, "Here are claims which may be made on the treasurer of the navy for 100,000*l.*, and we have each of us a balance in hand of 10,000*l.* left from Saturday night." From the experience he had in the office, he would answer: "You will not want more than thirty or forty thousand to-day; and if you should, I shall be here all day, so that there is no necessity to draw for a larger sum at present." What did he do with the balance? he left it in the Bank till it was really wanted: if the navy service did not want it, he did not draw for it. But when the treasurer was allowed to place the money in the hands of Messieurs Coutts, his own interest wanted it; and therefore he drew at once for the whole assignment or a great deal more, and there is the distinction between the two modes of conduct.

Your lordships will probably suppose, that great balances were always left in the hands of Messieurs Coutts, to answer the demands of the treasurer of the navy. No such thing; for you will find on inquiry, that when there was a deficiency of 490,000*l.* there was but 16,000*l.* of it at Messieurs Coutts's; and that at many times, when the deficient balances were very large, Mr. Trotter had very small sums at Messieurs Coutts's; at others, that his account was overdrawn. Therefore, the placing of the public money at Messieurs Coutts's could be for no other purpose than that of private profit and emolument.

My lords, the treasurer of the navy has said, that he suffered Mr. Trotter to do this, for the purpose of private emolument. Lord Melville, in his examination before the naval commissioners, being asked, "Did you give permission to the paymaster to withdraw the money from the Bank, and lodge it in the hands of a private banker, *with a view* to his deriving any advantage or emolument therefrom?"—gives this answer: "If it is meant to ask me, whether I ever gave any direct authority to the paymaster to use the money in the manner above-mentioned; I should certainly answer, No: but I have no hesitation



in saying, that I believed and understood he did, and never prohibited him from doing so: and I believe it was so understood by others, at different times, when the establishment of the Navy pay office was under consideration; when certainly no competent provision was made for the person exercising that trust of great extent and responsibility."

Now, my lords, was it so understood, or could it be so understood by any human being? Much less could it be so understood by the noble lord, who brought in the act, who appointed Mr. Trotter his paymaster, and who in a memorial which he submitted to his majesty, and which was made the foundation of an order of council, named the salaries which the different officers of the Navy pay office ought to have. If the salary was insufficient, why did not the noble lord propose an increase of it? He had access to the royal ear at that time, and during a great number of years. Any thing of his recommendation, either to his colleagues, or to his majesty, would have met with its due weight. And if the paymaster of the navy was not sufficiently remunerated for his trouble, it was in lord Melville's power, with a nod, to have determined what that remuneration should be. The establishment of the Navy pay office afterwards became the subject of inquiry before a committee of the House of Commons; and there it was declared, that no fees or gratuities whatever were received by the persons holding situations in the Navy pay office. It is, I think, unnecessary for me to trouble your lordships further upon this part of the impeachment. We charge, in these articles, as an offence committed by lord Melville, that he permitted Mr. Trotter to do these things; that he connived at his doing them for some indirect and improper purpose.

Now, my lords, we come to the last division of this accusation against the noble lord, which would the most materially implicate his reputation, if the fatal letter which he wrote to the naval commissioners, in the month of March 1805, did not give the pre-eminence of guilt to the charge contained in the first and tenth articles. For, my lords, we now charge upon lord Melville, that he did directly participate in the profits made by Mr. Trotter. We shall specify the mode, and we shall prove the items of the accounts, in which it will be seen, that lord Melville participated in those profits.

My lords, there is one article which, I believe, I forgot; the article which charges that the public money went into the hands of Mr. Sprot and others. Lord Melville having given to Mr. Trotter the power to remove it from the Bank, it was carried into various channels, and Mr. Trotter was permitted to put it into the hands of Mr. Sprot, or any other person whatever, just as he thought proper.

But, my lords, to return. There comes, in the front of the next class of articles, a second sum of 10,000*l.* The fifth article charges,

that lord Melville took the further sum of 10,000*l.* for his own use. My lords, I heard him say, and he was heard by many others to say, that 40,000*l.* was two-thirds of the whole sum he ever subtracted from navy services: for that 40,000*l.* he has received an indemnity. And, with respect to the other two sums of 10,000*l.* each, he stated, that he never would reveal the application of them. I have only to say here, *that he confessed it.* We have his confession in the face of the whole House of Commons. Let him show your lordships, if he can, for what purpose this was applied: and, if he cannot show it, I say, for his very concealment, you must convict him.

My lords, the proof of this article will rest entirely upon the assertion of lord Melville; and out of the difficulty created by that assertion his counsel must extricate him how they can.

My lords, it is now necessary to inform you, in order to lead you to those transactions in which lord Melville was personally concerned as a participator, that Mr. Trotter proceeded very cautiously in the early part of his career: that, before he employed any private banker, as Mr. Coutts,—before he dealt with Mr. Sprot,—before he dealt with Mr. Lind,—before he dealt with divers persons, through whose means and intervention he made profit of the public money,—he employed a person in the Navy pay office, of the name of Jellicoe, to transact business, and employ certain comparatively small sums for him. Mr. Jellicoe has been heretofore frequently mentioned out of doors, and in the House of Commons. Mr. Jellicoe's deeds are not now before your lordships, and nothing respecting the connexion between the noble lord and Mr. Jellicoe is before you. But it is proper to say, with respect to Mr. Jellicoe, who died a public defaulter, that otherwise a man of more strict integrity, according to every account that has been given of him, never existed. Unfortunately for him, he had dealings with the public money. Those dealings led him into embarrassments, and those embarrassments shortened his days. He died of a broken heart in consequence of not being able to make good the public deficiencies, occasioned by the appropriation of certain sums, which he fondly imagined he should be able to repay, and that the use of them would produce wealth and happiness.

My lords, if all prosecutions of this sort are instituted for the sake of public example, as we profess that this prosecution is, and not with a view to the persecution or harassing of any private individual;—for all punishment of every sort ought to be inflicted for the sake of public example, and not for the purpose of vengeance on the unfortunate delinquent;—it must be the anxious desire of every good heart, if it were possible, to separate *the crime* from *the criminal*, to come at the deed without pressing upon him who perpetrated it. It is the morals of the country we wish to re-



form; it is the repetition of bad practices that we wish to prevent: not that he who has committed the crime should be crushed. Here, therefore, I could wish to speak, so that my voice should pervade every corner of the country, should reach every person who has the custody of public money, that I might warn him against the temptation to which he might otherwise yield. I will caution every public accountant against the use of the public money entrusted to his charge, as a fond parent would caution a child against the fascination of the machinery of a mill: do not go near it; above all, do not touch it; for if only the hem of your garment should be caught, you will inevitably be crushed. Meddle not with public money; take care that it passes purely through your hands; for the use of it, instead of leading the road, as you may falsely hope and expect, to fame, to fortune, to comfort, and to happiness, will lead you to destruction. Look at Mr. Jellicoe, a good member of society, brought to an untimely grave! Look at Mr. Trotter! Can all the money he has made, compensate the pang he must endure, when brought to give his testimony against the noble defendant, his patron in early life, to whom he must have, as many have, an ardent attachment? Above all, look at the noble lord himself now upon trial for having connived at the use of public money, and participated in that use. Look at the situation to which he is reduced! Look at him compelled to relinquish one of the highest offices of the state: his name erased from the list of the privy council! and, as you would avoid pain and ignominy, nay, as you would avoid death itself, do not by any temptation be led to meddle with the treasure committed to your care.

My lords, we charge, that the noble defendant did use the public money, after the transactions with Mr. Jellicoe had ceased, and when the employment of Mr. Coutts's house began. We charge, first, that Mr. Trotter made advances to him; *that* we shall prove, by a variety of documents, and by the evidence of Mr. Trotter; whose evidence shall be confirmed to you by the evidence of books. Mr. Trotter made those advances, without interest, to lord Melville; which fact affords a substantial ground of belief, that lord Melville must have known that the advances were made out of *public money*. That is the first step. We then come to transactions in which there is a difficulty, as it is pretended, to ascertain, whether the monies were Mr. Trotter's, or were not.

I here again beg your lordships to advert to the situation in which we have stood. We have had before us accounts kept in a state of perplexity, for the purpose of deceit; and which, I heard lord Melville say, were so intricate, that whoever attempted to unravel them, would find himself more and more lost in the labyrinth. By labour we have succeeded in rendering them as clear as day.

With one glance you shall see through the whole mass of them, till we bring them to the conclusion,—and which lord Melville by his acts acknowledged,—that he had participated in profits derived from the public money.

Mr. Trotter had no less than four accounts open with Messieurs Coutts. Lord Melville had no less than nine cash accounts kept with different persons, comprehending three public bankers. Through the whole mass of these thirteen accounts we have been obliged to travel, with great labour; for which we claim no merit, because it was our business, and we undertook it.

My lords, we charge that Mr. Trotter made advances to lord Melville out of his funds at Messieurs Coutts's. Mr. Trotter will tell you that he did so, and we shall also prove it by a comparison of the several accounts. That he kept an account current with lord Melville; and further, that, for the purpose of preventing these things being brought to light, when a rumour began to prevail that they might be the subject of inquiry, the books and papers which would have furnished the most complete evidence, were, by agreement, destroyed: which fact we shall prove by the instrument itself.

My lords, Mr. Trotter kept an account current with lord Melville: that account current was kept in a book; that account current was copied out of that book once in every twelve months, and was delivered to lord Melville, together with another account, to be mentioned presently. We shall show your lordships, that lord Melville, after inspecting that account, signed duplicates of it; one part he kept for himself, and the other was delivered back, as is usual, to his agent, Mr. Trotter. This book also contained various accounts with other persons. But, it is destroyed and that for the purpose of concealment. Lord Melville tells us, that *his* vouchers are destroyed. They also are destroyed for the purpose of concealment. Mr. Trotter tells no untruth, in saying, that he kept his account with lord Melville in a book. We know, and can prove it from other sources. For it happened some few years ago, that this book was lost by Mr. Trotter, and found by a person now living; who showed it to other persons, also now living, before it was restored to Mr. Trotter. The agreement, in consequence of which the destruction of these books and papers took place, purports to be a release, and contains a clause never before heard of in any instrument of a like nature.

This clause states, that lord Melville and Mr. Trotter “have, either mutually delivered up to each other, or *resolved and agreed mutually to cancel and destroy*, all the vouchers or other memorandums and writings that at any time heretofore may have existed, passed, or been interchanged between them relative to the said accounts, and the different items and articles of which the said accounts are composed or consist.”



My lords, there are some forms in law which would appear to a person who is totally ignorant of legal practice, to imply a great deal, but which are mere matters of course, and mean nothing. But we have endeavoured, by the examination of divers competent witnesses, to see whether any thing of this sort was ever inserted in any deed of the kind, in either part of the United Kingdom; but no precedent can be found. At what time was this release executed? \* At a most critical juncture.—At the very time when the commissioners of naval inquiry were about to investigate the affairs of the Navy pay-office; at the very moment when they called for the balances of the treasurer of the navy. In the interval, between the call for those balances and the return to the precept, was this release constructed. It was sent down by the post to Scotland, where it was executed by lord Melville, and it was afterwards executed by Mr. Trotter in London.

I would now beg your lordships to look at the acknowledgment therein made by lord Melville. Mr. Trotter states himself, in the release, to be debtor to lord Melville, to the amount of 1,400*l.* I think, but no matter the sum. Could lord Melville, unless he had Mr. Trotter's account before him, have said whether this statement was true or false? or will he say, "I am so careless a man, that I never looked at the papers when settling the account: I did not look to see whether the balance was fourteen hundred or fourteen thousand pounds?" No man, particularly lord Melville, in the situation in which he stood with regard to Mr. Trotter, can possibly set up such a defence; for he had entrusted him with the expenditure of a hundred and thirty millions of money. Very large private dealings had taken place between them, and at last the balance is reduced to 1,400*l.* Shall he be allowed to say, that he acknowledged this balance without looking at any account?—without having the figures before him? But if he should set up such a defence, I will read another part of his own release against him: "Whereas for several years past there have been sundry accounts, reckonings, and money transactions, depending between us," (that is, Mr. Trotter and lord Melville), "*the accounts of which,*" (I beg your lordships' particular attention to this paragraph), "*have lately been examined, adjusted, and agreed between us, and upon such examination, settlement, and adjustment*"—thus lately made; it could not then have been a casual burning of papers, in consequence of a man being overloaded with them; but he gravely asserts that he has examined all the papers. Must not your lordships presume, that those papers and books, so examined, were before him? "And upon such examination, settlement, and adjustment, there remained a balance due from the said Alex-

ander Trotter to the aforesaid lord viscount Melville of 1,380*l.* 11*s.* 1½*d.* sterling money" (very minute, your lordships will observe), "with which final examination, statement, and adjustment, both parties declare themselves perfectly satisfied, and do hereby approve of and ratify the same." Then it goes on to state, that in consequence of the examination and adjustment of those vouchers so before them, they had either mutually delivered up the same, or had resolved and agreed mutually to cancel and destroy any thing which might remain in their possession. Can any thing be more plain, in language, to prove that they had these accounts before them? They do not state that they *have* destroyed; but they resolve that they *will* cancel and destroy. The instrument itself then proves, that part of the charge alleged against lord Melville; namely, that the books, documents, and papers, were destroyed, in consequence of a release; and the inference is undeniable, that they were destroyed for the purpose of concealment.

We will now proceed to the other parts of the charge.

There are three distinct modes, in which we charge lord Melville to have participated in the public money. He participated, first of all, in a transaction on which no interest was charged by Mr. Trotter to him: he participated, secondly, in a transaction in which interest *was* charged by Mr. Trotter to him; he participated, in a third transaction, where no interest was charged by Mr. Trotter to him. They stand in that order in the articles; but, for the purpose of explaining the transactions to your lordships more perspicuously, I beg to alter, not to invert, the order of them; and to take the middle charge first, and then the other two together.

If your lordships will have the goodness to refer to the eighth article; you will find it there charged, that lord Melville obtained from Mr. Trotter the advance of a sum of 22,000*l.* or some other large sum of money; for which it has been alleged, by lord Melville, that he was to pay interest; and we further charge, a destruction of papers, &c. to conceal *this* account also.

My lords, the history of the transaction is this. Mr. Trotter was in the habit of occasional, but not, I believe, frequent intercourse with lord Melville. I do not think they had many interviews upon business, either public or private: and I might here observe, that instead of apologizing to your lordships for being able to produce so little evidence, in a case, where, as I stated in the early part of my address, there were so many difficulties; wherein so much passed by signs and nods; by asking for things in particular ways; I am rather astonished how we have been able to produce so much. At one of those interviews, lord Melville, then holding several great offices of state, and being one of the most efficient members of an administration



which advised his majesty for many years, and president of the board of control, said to Mr. Trotter, that he had a great opinion of the value of East-India stock: that he thought it *very probable* East-India stock would rise; and he followed up the conversation by saying, he should be extremely happy were he able to possess himself of some India stock. Upon which Mr. Trotter, who appears very readily to have understood lord Melville, said, I can suggest to your lordship means, by which, if you please, you may possess yourself of a quantity of India stock, which will be advantageous to you, and not detrimental to any body. How is that? Why, my lord, there are large public balances always lying in my hands, and, if your lordship pleases, I will lay them out in the purchase of India stock for you. Lord Melville was highly indignant at this proposal. "What! purchase India stock for me with public money? No: no more of that, I pray you, Mr. Trotter."

My lords, I am now come to a point to which I referred in another part of my speech, when I said, it was impossible the transactions of Mr. Trotter with the public money, should not have come under lord Melville's notice! Was not this a moment for lord Melville to say, Why, what balances of public money have you then in your hands? You appear to me to be going on too fast: let me see what you are about. No, not one word did he say to Mr. Trotter about what *he* was doing with the public money; but at once said he would have no such thing done for himself, and Mr. Trotter retired rather abashed, and ashamed of what he had proposed. He however reflected, that it was a pity lord Melville should be disappointed in the arrangements he wished to make; and he went to him again, and told him that, although he would not permit this to be done out of the public money, he thought he had a relation who would advance money to his lordship for the purchase of some India stock, and that the stock itself might be made the security for the repayment of the money. Lord Melville agreed to this; and said, 'Let it be done;' without asking a question as to whom he employed; who was this relation: but he said, Let it be done; and it was done.

Mr. Trotter soon after informed lord Melville, that a purchase of India stock had been made: and then he added to it; and then he added again to it; and so by degrees the purchases amounted to 13,500*l.* stock. To show that these purchases were made, and that they were made by the direction of Mr. Trotter, and paid for by him, we can call Mr. Antrobus, Mr. Lind, and a variety of witnesses, and we can produce the books of the East-India company.

Lord Melville constantly paid interest to Mr. Trotter for this money. But who was Mr. Trotter's friend in this transaction? Why, Mr. Trotter went to a gentleman, who is now dead, by the name of Lind; a relation with

whom he had large money transactions; and asked Mr. Lind to lend him money to purchase India stock on behalf of lord Melville. Mr. Lind said he would think of it; but at length he could not do it. Then what did Mr. Trotter do? He lent Mr. Lind the public money, for him to lend to lord Melville, to purchase the stock. But lord Melville never signed a scrap of paper. Mr. Trotter never told him who it was that had lent the money; he never suggested the name of the person who put such unlimited confidence in him, as to let him have the money to lend to lord Melville without security. The stock was first in Mr. Lind's name, then in Mr. Antrobus's name, then in Mr. Trotter's name, then in Mr. Coutts's name. But in whatever name it was, the dividends were constantly carried to the credit of lord Melville's account with Mr. Trotter: and Mr. Trotter paid the public money to Mr. Lind, for the purpose of Mr. Lind's purchasing this India stock for lord Melville's use.

My lords; some time after this, India stock rose considerably. The dividend was increased to ten guineas per cent., and at the expiration of his treasurership, he borrowed money upon it: for, it was not sold when he wound up his account, and from the rise occasioned by the increase of dividend, lord Melville profited considerably.

My lords, here I leave this transaction of India stock for the present; but I shall return to it, and at the conclusion of the account fix the knowledge of the whole history of the affair upon lord Melville.

I must not, however, here omit one circumstance concerning this parcel of stock which alone would give your lordships a just suspicion that he must have known at the time, that it was purchased with public money. The whole cost of the stock was 23,000*l.* The debt for the capital with which it was purchased, was soon reduced to 20,000*l.* either by a payment of 3,000*l.* made by lord Melville into the hands of Mr. Trotter; or by the carrying of 3,000*l.* to the debit of the account current raised between lord Melville and Mr. Trotter. Then if lord Melville in discharge of that 3,000*l.* paid bank notes, or other effects, into the hands of Mr. Trotter, for which he claimed no discharge, it is obvious lord Melville must at the time have known that it was Mr. Trotter, and none but Mr. Trotter, who had advanced the whole or any part of this money: and no receipt *was* taken by lord Melville in discharge of that 3,000*l.*

But, to leave it there for the present, I shall carry your lordships on to the charge in which we say he took 23,000*l.* or thereabouts, without interest: and this is the most direct charge, if there can be any selection, of any that is made against lord Melville for participating in the profit made of public money. Lord Melville, at the time he appointed Mr. Trotter his paymaster, acknowledged to him, that he was indebted to the public in the sum



of 10,600*l*. The balances in all the books correspond in fixing this sum. This 10,600*l*. formed the first item of an account, which was opened by Mr. Trotter after he came into the office, entitled, by way of distinction, and by the order of lord Melville. *The Chest Account*; which was carried down to the month of May 1800.

Now, my lords, let your recollection go back for a moment to the original opening of the first article of the impeachment. The 10,000*l*. which lord Melville declared was never taken for the purpose of his emolument, you will now find remained in his pocket from January 1786, to May 1800, without interest. Did he then make no profit of it?—The chest account was increased by various payments made on account of lord Melville. A transcript of it was delivered annually to lord Melville, together with the transcript of the account current. Lord Melville signed and exchanged the duplicates of this account likewise, and he knew that the chest account was unmixed public money, as Mr. Trotter will tell you.

Then, how is he to be extricated from that difficulty?—Was it paid for public purposes? No such thing:—it was public money, used for his own private emolument. How did lord Melville ask for advances of money on this chest account? He asked in an undisguised, open manner, in the same way he asked for the 40,000*l*. for which he has received an indemnity. He said, I want so much money, and Mr. Trotter immediately sent it, without asking any further questions; and he delivered the account comprehending all the advances to lord Melville at the end of the year. He must also have known, that the account current was an account with the public, though there was a shadow between them in that; but in this, there was neither substance nor shadow. This account was likewise increased to the amount of 22,000*l*. or 23,000*l*. But there was a particular sum of money which passed from the one to the other of these accounts, which connects the two, so as alone to substantiate the whole of our charge, and to make it impossible he should not have known it was all public money.

Your lordships recollect, that in the year 1797, a national loan was obtained by the subscriptions of a number of eminent individuals, as well as respectable merchants and other persons, called, *The Loyalty Loan*:\* to which, I heard lord Melville say, it was generally understood, that all persons in high situations of government ought to subscribe. He put down his name for 10,000*l*. which sum he candidly acknowledged was not in his possession; and therefore he was to obtain it from other sources. The noble defendant has said, that he believed the early payments upon his subscription to this loan were made from Scotland. But not a shilling of it came

from thence. Every payment was made by Mr. Trotter, and every payment out of the public money.

Mr. Trotter first of all carried this 10,000*l*. to the account current; but in consequence of lord Melville not repaying any part of the money, as had been expected by Mr. Trotter, he began to be alarmed: and he transferred the charge from the account current to the chest account. He told lord Melville he had done so; and he received his lordship's approbation for having done it: he (Trotter) telling him that he had done it, because he did not dare to stand responsible for the addition of so large a sum. Can there be any thing more conclusive than this? Here lord Melville knew, not from inference, but from direct information from the accounts in black and white laid before him, that the purchase had been made with public money.

My lords, that this chest account also did exist, I can show, notwithstanding the book in which it was contained is destroyed. I can prove its existence by living witnesses, who saw the book in which it was written. Mr. Trotter's story will be confirmed; and your lordships may believe him in this, as well as in every other part of his testimony.

My lords, if we do not make out this article which charges the chest account; and if it be not proved to be a continuation of the chest account, which was originally opened by Mr. Douglas, for the purpose of entering the sums, which were advanced for the private use of lord Melville; I think there never was any thing established in a court of justice.

I now come to the more particular history of that which Mr. Trotter called the account current, between himself and lord Melville. The account current is that in which lord Melville was generally debited and credited for his payments to, and receipts from Mr. Trotter.

My lords, when Mr. Trotter was first made paymaster of the navy, he was not in the Navy pay office.—He had been out of the office for something more than a year, I believe: and during that time he had attempted to set up in business as a navy agent, in which he did not succeed. Before that, he had been in the Navy pay office for several years, at a salary of 50*l*. a year, at first; and afterwards, not exceeding 100*l*.—I will prove that, till he was made paymaster, his private fortune was nothing. The legacies afterwards left to him by his friends and relations were very trifling. One of them, an elder brother, who died a short time before his advancement, had left him about 2,000*l*. and that was all Mr. Trotter had in the world.—Lord Melville perfectly well knew this; yet as soon as he had appointed him paymaster, he made him his private agent; and within four months he began to borrow money of him without interest.—Now, can any man believe that lord Melville could be so ignorant of the common affairs of life, as not to know that Mr. Trotter

\* Vide 33 New Parl. Hist. 783, 787.



could not possibly furnish such advances from his own funds? That no man, without some particular reason, could lend him money without interest? And must he not have known the particular reason here to have been, that the lender had the advantage of using the public money? But, beyond that, Mr. Trotter will tell your lordships, that he has, at different times, expressed his gratitude to lord Melville for the situation in which he had placed him. And *that* gratitude was expressed, not for the salary of 500*l.* a year, but for the other advantages attending his situation.

My lords, upon fully examining these perplexed accounts, on casting and re-casting, on considering and re-considering, and turning them over in our minds, in every way, we find that certain sums were not only paid, as lord Melville has said, from the mixed and undistinguished funds of Mr. Trotter, but that, at particular times, for instance, in September 1792, when Mr. Trotter had not any money at his banker's, he paid in a draft on the Bank for 8,000*l.* and with that he purchased 4,000*l.* East India stock; one half for himself, and the other half for lord Melville (this, independent of the larger transactions of 13,500*l.* in the same stock). Lord Melville will perhaps say he did not know of this; but could he be so blind as to find this stock purchased with the advance of money from other persons without interest, and not suspect that the money was obtained in a way different from that in which other people obtained their money? He must not only have suspected it, but have known it.

But, my lords, to go back to the origin of this account—How did it begin?—With the loan of a certain sum upon *security*. I have heard lord Melville say, that Mr. Trotter had given no account of the securities he had in his hands. From this, during the course of eighteen years, one might have expected to have found a long list of securities: what do they amount to? One single solitary bond given in 1787 for 4,000*l.*, which was cancelled and destroyed many years ago; and which, whilst existing, carried evidence upon its face, that it was given for public money, for it did not bear interest; and Mr. Trotter's reason for not charging interest was, that he thought it was a proper compliment to the treasurer of the navy.—Good God! my lords; could a man be so complimented without knowing that the man who paid him the compliment was practising fraud somewhere?—Shall a man come to me and say, I will lend you four thousand pounds, when I know he is not worth four thousand pence?—Shall he be living in a style which out of his legitimate income, I know he cannot afford? Shall he actually lend me 4,000*l.* without interest, and must I not know that he must have obtained it fraudulently?

Is it then true, that lord Melville did not participate in the public money? Says lord Mel-

ville, It was Mr. Trotter did this, and I had no hand in it.—Does the evidence upon the fact correspond with that assertion? We shall prove that this 4,000*l.* was taken out of a pure, unmixed fund of public money, in which Mr. Trotter had not one farthing of his own.—It was taken from the unmixed fund of Exchequer fees, which was all public money. This account current contained also originally the advance for the Loyalty loan; and it contained various sums of money, amounting in the whole, as we charge, to the sum of 22,000*l.* or thereabouts.

I shall presently have occasion to call the attention (and I think it must excite the admiration) of your lordships, to the surprising memory of these two persons. When all their accounts were gone, memory served them both, so as to be correct in their separate statements to a fraction.

Lord Melville has endeavoured to show, that Mr. Trotter received large sums on account of his salary, on account of monies sent from Scotland, and others, of which he has given no account. But Mr. Trotter carried *all* the monies he received to the account of lord Melville; and after all, he remained debtor to Mr. Trotter, in the sum of twenty-two thousand pounds, or thereabouts, on the account current. But were there any large sums regularly paid into the hands of Mr. Trotter for lord Melville? We can show your lordships, by negative evidence, that there were not, excepting only his salary as treasurer of the navy. This was originally kept in a separate account; and there was also a separate account kept for the Melville Castle Indiaman; but it having been found to be inconvenient to keep so many accounts, they were reduced to two; and to the account current every farthing of the salary of lord Melville was carried.

But lord Melville held other high offices in the state.—He was secretary of state; for that he received no emolument during the time he was treasurer of the navy.—He was president of the board of control; for that he did, a part of the time, receive a stipend. Who was his agent for the receipt of that? Not Mr. Trotter, but Mr. Meheux. Who received the fees arising from his office of secretary of state? Mr. Pollock.—Who received his salary as keeper of the signet? Mr. Warrender.—Who received his salary as keeper of the privy seal? Mr. Dundas, the writer to the signet.—Did they account to Mr. Trotter for what they received? No.—Did these sums ever come into his account? No. Only some accidental occasional payments sent up from Scotland. The regular payments from his private estates, were received by Mr. Robert Trotter, or Mr. Dundas.—Mr. Alexander Trotter never received any of them; they never passed into his accounts at all. He was credited for every thing that did come; but the money arising from the various sources I have stated in fact never came into his ac-



count current: and at the conclusion of it lord Melville was indebted to Mr. Trotter or to the public in that account, 22,000*l*.

Now, my lords, we are coming rapidly to the conclusion of this scene, and a most interesting conclusion it formed.—Lord Melville has declared he liked the office of treasurer of the navy, much better than the office of secretary of state. For the purpose of some political arrangement however, before Mr. Pitt went out of office, he resigned the treasurer-ship of the navy, and was succeeded by lord Harrowby. It then became necessary for Mr. Trotter to make up his deficiencies, which amounted at that time to 220,000*l*.

I would not consume your lordships' time in details more minute than are absolutely necessary; but perhaps it may be as well to say, that large sums were paid through the account current to particular persons, on lord Melville's account. Messieurs Mansfield, Ramsey and company of Edinburgh, received 5,000*l*., sent through Mr. Robert Trotter of Edinburgh. With this 5,000*l*. a heritable bond, or landed security, was redeemed, by which means lord Melville got rid of the payment of five per cent. upon that advance; having obtained the loan for its discharge, without interest. Another sum, which it is not now material to specify, was paid through Mr. Robert Trotter to sir William Forbes, by which lord Melville redeemed securities at interest also, with money for which he paid no interest, and gave no security whatever.

To return to what I was stating, as to the conclusion of the transaction—There being a difference between the Bank balance and the official balance of 220,000*l*., Mr. Trotter stated it to lord Melville. Give me leave here to remark to your lordships, that Mr. Trotter had, at the end of the year 1799, paid into the Bank, on the 31st of December, all the sums of money due to the public, which had been taken out for his own private use, but he did not pay up the sum which might have been, at the time, in the possession of lord Melville.

It was proved, before the commissioners of naval inquiry, that on the 31st of December, 1790, Mr. Trotter had made up the *whole* of the deficient balance at the Bank; and if he had taken the same precaution every year, which he might easily have done, by the sort of machinery used then, such as giving drafts to the sub-accountants, which were not to be presented till the morrow, or perhaps some days after their date; or if he had obtained a sum of money from Coutts's, to be repaid the next day; if by such expedients he had annually made good his accounts, it is most likely these discoveries would never have been made; but having done it once, he did not think himself bound to make good lord Melville's deficiencies every year; and it will be proved, that from 1790 down to 1799, every deficiency at the Bank, on the 31st of December, in each year, was the deficiency

occasioned by the money advanced by Mr. Trotter to lord Melville, for part of which he knew he was debtor to the public immediately, and for the rest of which, Mr. Trotter stood between him and the public.

This being the state of the case, in March, 1800, Mr. Trotter told lord Melville, that on his going out of office, it was necessary all deficiencies should be made good; and he laid before him an accurate statement in writing, drawn out by his clerks, and examined by himself, showing lord Melville what he was to furnish, and what he (Trotter) was to make up. The chest account, and the account current, were both placed before him. That part of the deficiency which lord Melville was to make good, comprehended the debt due upon the account current, as well as upon the chest account: and this statement must have brought to his knowledge the fact, that the advances upon both accounts were from public money. Lord Melville's share of the deficiency amounted at that time, altogether, to the sum of 71,000*l*. What means did lord Melville take to make up this sum? First of all, the stock that had been bought for lord Melville's use, and the dividends upon which had been carried to his credit, were all sold, except a parcel of favourite stock; which was the 13,500*l*. East India stock, purchased with money lent to him at interest by some person then unknown, but now proved to have been Mr. Trotter. He could not but be known *now*, because the India stock was retained, and money borrowed upon it. It was supposed to be pledged to some other person for the money with which it had been purchased: but it could not carry double; it could not carry Trotter and his friend too. That would be rather too hard. But there was only one person upon it, and that was Mr. Trotter. Upon the suggestion of Mr. Trotter, and with the assistance of a near and dear relation of the noble lord's, who added his security, Mr. Sprot advanced 56,000*l*. to lord Melville, partly on the security of that very East India stock which Mr. Trotter, as it is supposed, had borrowed money to purchase.

My lords, is it possible that no conversation should have taken place at this juncture? Must not lord Melville have signified to Mr. Trotter his intention of keeping this stock? which must have produced an explanation. Mr. Sprot was not a man so loose in his money dealing, as not to look well to his securities. He took possession of this stock, and upon the security of it he advanced his money, which, as he will tell you, was out rather longer than he could have wished. Lord Melville himself gave him possession of it, and with the advances he made good a part of his deficiencies at the Bank.

The estimated produce of the stock, at the price of the day, amounting to about 32,700*l*., was paid by Mr. Trotter on lord Melville's account in this manner: 20,000*l*. he took to himself, to repay the balance due to him on



the advance made for the original purchase, and paid it into the act of parliament account at the Bank, in discharge of his own deficiency. The excess, viz. 12,743*l.* was paid in discharge of a part of lord Melville's deficiency, so that lord Melville obtained the benefit of the difference between 23,000*l.*, which the stock originally cost, and the 32,700*l.* for which it was sold.

It appears, however, that with the produce of this, and other stock, that was sold to the amount of *nineteen thousand pounds* and upwards, lord Melville had not money enough; he was under the necessity of applying to Messrs. Coutts, and they lent him, in the regular course of business, upon good security, 13,000*l.* This sum of 13,000*l.* he paid immediately into his public account at the Bank. We know the clerk who paid it, and we have the bank-notes with which it was paid; we know the money was drawn by a draft, signed with lord Melville's own hand. Let me ask; if he was not indebted to the public, why did he pay this money out of his private pocket? He could not intend to make a present to the public of the 13,000*l.* nor of the 32,000*l.* nor of the 19,000*l.*

Still the account was not clear. In addition to all that had been done, he made the public pay itself. After having put all these sums together, they did not make up the balance. In this emergency, he went back to a gentleman, to whom he had lent money some years before; the treasurer of 1782. He said, I served you a good turn in 1784. You shall serve me a good turn now; you shall help me to make up the remaining balance, amounting to 5,333*l.* 6*s.* 8*d.* I pray your lordships to attend to the specific sum. The money was in the Bank of England, its proper place; in the account of the ex-treasurer of the navy, from which it could not be so removed without a violation of law. He took it out of his ex-treasurership account, and paid it into the account of his second treasurership. Why, what a farce and mockery is this! "I have made up all my accounts; I am not debtor to the public in a single shilling; and I have never used any of the public money for any other than public purposes."

My lords, with respect to the balance of the ex-treasurership, it has been asserted that lord Melville did not know where to pay it. Where did the great lord Chatham place the balances remaining in his hands at the time *he* went out of office? He placed them in the Bank, that no imputation might rest upon him. Where *were* lord Melville's balances as ex-treasurer of the navy? At the Bank; whence he took them and placed them in his own pocket; making them a part of that screen, whereby he contrived to make that appear square, just, and right; which was neither square, just, nor right; but unjust, wrong, and crooked throughout.

My lords, we have brought these transactions to a point, beyond which it is almost

impossible for circumstances to go, if I have not egregiously failed in my statement to your lordships. We are now upon the eminence where I engaged to place you. You must now see all the transactions of those eighteen years. How the stream of corruption, of smaller dimensions in the beginning, swelled in its progress to a much greater volume; till the whole was returned to the gulf whence its origin was derived. The termination of his dealings alone would convict the noble defendant of the crimes and misdemeanors we allege against him. We shall farther prove to your lordships, that these acts were notorious; and that they were known to be improper and illegal during the whole time they were carried on. That they were brought to the notice of lord Melville; that some of those persons who were criminally engaged in the transactions, and are now indemnified, knew the illegality and impropriety of such conduct, but none dared to accuse. We could prove to your lordships, by a memorable instance, that the Bank knew such things were done. A conversation took place between the noble defendant and one of his colleagues, in which the matter was mentioned to him; but he contrived to put it aside, and the inquiry was not prosecuted.

At the time Mr. Trotter lent him the first 4,000*l.* without interest, it must have come under his consideration. At the time of the purchase of the East-India stock, it must again have been forcibly impressed upon his mind, by the remarkable conversation which then took place; and, at the conclusion of the whole it was again so manifest, that if he had before believed Mr. Trotter possessed the philosopher's stone, and could conjure up as much money as he pleased, he must then at least have discovered that the secret was in the treasurer's cash account at the Bank. My lords, Mr. Coutts knew this to be improper, and so stated it to Mr. Trotter. Mr. Wilson, who acted for Mr. Trotter in his absence, but never made any use of the public money for himself, knew it to be improper, and (to use his own forcible expression), always acted in trembling. But this answer may be given. What? if these things were notorious during so many years, and were not taken notice of, is there not a great degree of persecution in charging lord Melville criminally at this distance of time? My lords, we deny that the charges have been exhibited in any but the true spirit of justice. We claim credit from your lordships for so much in the name of the Commons of the United Kingdom. We contend that the Commons are just and honourable prosecutors of the noble defendant. They cannot act in the spirit of persecution; and not only *they* cannot act in that spirit, but even those of their members who have had the conduct of this business, cannot have acted in the spirit of persecution either. Persecution is an odious and disgusting compound of malevolence and power.



Has our conduct betrayed any thing like malevolence? If it has, our conduct has done injustice to our feelings. We have no malevolent feelings whatever; and I trust and hope we are free from such imputation by the acknowledgment of the noble defendant himself. As to power! Was the hand of power stretched forth to crush a weak and unfortunate individual, who might be obnoxious to the court, or no favourite with the people? No, my lords: the noble defendant, at the time he was first attacked, was a man in great power, holding one of the highest offices in the state; assisted and protected as long as it was possible by one of the most able men, and *the most powerful minister* that has almost ever existed in this country. He had friends innumerable, and many friends he still possesses, even among your lordships. It was the voice of justice that spoke, or that voice could not have prevailed. But the very notoriety of the transactions, shows how powerful he was, and how impossible to institute the prosecution at an earlier time. Many knew, but nobody dared to tell. Why? Because he was all powerful in the vessel of the state; from the keelson to the top gallant mast head he was every where. His influence was felt in all quarters. When he issued forth from his habitation in Somerset-place, could he go to the east, and not see proofs of his power? If he turned to the west, he was in the seat of his power also. Did not his patronage extend from the sources of the Ganges to the Orkneys? Was there a ship sailed which was not fraught with tokens of his sway? Was there an exciseman made, or a viceroy appointed, that he was not consulted?—If these things were so, my lords, can we be surprised that inquiries were not sooner instituted? The knowledge of these transactions was extended to a large description of persons; but to the House of Commons as such, they were unknown, or known only to some of its members in a particular manner. It required some extraordinary circumstances in the political world to make it possible to bring the noble defendant to trial, and, as I hope, to justice. It required, first of all, a person to set things in motion. Happily such a person existed. The predecessor of the noble lord in the Admiralty. He whose fame was cradled under the blazing batteries of Quebec; he, the conqueror off Cape St. Vincent; he who, with a salutary disregard to precedence, selected the immortal Nelson, and sent him to the battle of the Nile; thereby preparing him for the everlasting day of Trafalgar, his sweet and glorious death; he who at this moment is carrying the British flag triumphant before the blockaded ports of the enemy; or if he has again ventured forth, is even now inflicting upon him fresh vengeance; adding to our security, and his own great renown. He it was who, in the interval between the more perilous duties of his profession, being appointed to the administration

of our navy, set a splendid example to power: \* he did that which many have been too justly reproached with neglecting. Whilst in the exercise of power, he endeavoured to deprive it of that factitious and depraved addition of influence arising from abuse; he set on foot inquiries. Those inquiries were followed by legislative provisions; those legislative provisions appointed men to investigate abuses in the naval department, who, to their immortal honour, will be remembered in the annals of their country, the naval commissioners.† To them the praise, to them the merit of the investigation. To them all the honour for the good which must result from this prosecution. To us only the secondary praise and the grateful reflection of having done our duty.

My lords, we shall also have to prove that lord Melville made great profit of the public money. But we shall have in answer to that, that lord Melville is not rich, and that if a man had taken all this money, he must be a rich man. My lords, the acquisition of money and riches are perfectly distinct. That lord Melville is a slave to the passion of avarice in its most sordid form, that he likes money for its own sake, was never imputed to him by me or any man.

But if a man loves money for its own sake, he may perhaps be less dangerous than if he loves it for any other cause; and if he loves money as the means of acquiring any other thing, he must part with money, to obtain it. Avarice, in its naked form, is so disgusting, that “to be shunned, it needs but to be seen.” As the pander of other passions, she is less hideous, but far more mischievous. She is as truly herself, when disguised under the fascinating mask of pleasure and hospitality, as when sitting amidst her filthy hoards. But she assumes her most formidable shape, when she becomes the tool of power. To what

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\* On May 14, 1806, the following resolution was passed by the House of Commons: “That it appears to this House, that the conduct of the Earl of St. Vincent, in his late naval administration, has added an additional lustre to his exalted character, and is entitled to the approbation of this House.” See also the case of the Hedgeses, *antè*, vol. 28. p. 1315.

† On May 2, 1805, the House of Commons passed a vote of thanks to the commissioners of naval inquiry in the following resolution: “That the commissioners appointed by an act of the 43rd year of his majesty’s reign, to inquire and examine into any irregularities, frauds, or abuses, which are and have been practised by persons employed in the several naval departments therein mentioned, have, as far as appears from the reports which they have hitherto made, exerted themselves with great diligence, ability, and fortitude; and that their conduct in the execution of the arduous duties entrusted to them, entitles them to the warmest approbation and encouragement of this House.”



enormities have not men, in all ages, been driven, to obtain money as the means of power? And if this ill-gotten money was employed by the noble defendant for the purpose of obtaining political influence in Scotland or elsewhere, the consequences of his rapacity are more to be guarded against than would have been the bare accumulation of wealth.

I shall trouble your lordships with but very few more words; but general impressions have been sometimes created, with regard to particular men, which make it almost impossible for those who have lived in habits with them to believe, that they should have done the thing of which they have been accused, even if the most incontestible evidence is brought against them. Many may say, lord Melville is of a spirit so frank and generous, we know so well the good qualities of his heart, that notwithstanding the evidence before our eyes, it is impossible we should believe he has done things so reprehensible. Your lordships, I doubt not would spurn at a general defence of that sort. But we are all liable to the influence of our partialities and passions: and if this were the first instance in which a peer of parliament had been so charged, even I and my honourable friends behind me, might hesitate, and say, let us consider whether what we have proved can be true. Are the things before our eyes possible?—Alas! my lords, we can refer you to the page of history. Look back, and unfortunately you will see how many splendid personages have appeared at your bar, impeached for the same sort of offence which we charge upon the noble lord. Several instances have occurred. But there is one whose name is great among mankind, who, in the agony of his soul before his peers, confessed that he had been guilty of peculation:—that man was lord Bacon. Of whom, without detracting from any who has lived in times past or present, it may be said

*Genus humanum ingenio superavit;*

in whose writings wisdom dwell;—upon whose lips she hung; who knew every avenue to the human heart, and has pointed out to each its appropriate guard; of whom it was said by the marquis d'Effiat, with an almost pardonable hyperbole, that he resembled the angels; so that when he stood and shook the plumes of his immortal genius, that heavenly fragrance so filled the circuit wide of the intellectual world, he might well have been mistaken for one of the celestial band. Even he, by this degrading passion, was thrown to the earth, and the basest among the sons of men might say, "Art thou, too, become like one of us?"—If then, lord Bacon did so, may not lord Melville have done so? My lords, hat he has done so, we aver, and we will prove it irresistibly to his conviction.

Adjourned to the Chamber of Parliament.

SECOND DAY.

Wednesday, April 30, 1806.

The Lords and others came from the Chamber of Parliament into Westminster-hall in the same order as on Tuesday last.

*Lord Chancellor.*—Gentlemen, managers for the Commons, you may now proceed with your evidence, and the Lords will be pleased to give their attention.

*Mr. Whitbread.*—My lords, we shall now proceed to adduce the evidence in support of the articles exhibited against lord viscount Melville; and the learned manager near me will take charge of that part of the case.

*Mr. Giles.*—My lords, the first evidence which the managers propose adducing to your lordships is intended to establish the introductory matter contained in the preamble of the articles of impeachment. For this purpose we first refer your lordships to the act of the 20th of the present king, chapter 54, appointing commissioners to examine the public accounts of the kingdom. I apprehend it will not be necessary to give your lordships the trouble of hearing that act read. I only notice it as a matter of form, and shall proceed to offer to your lordships the reports made by those commissioners. I at present mean to trouble your lordships with only the third and the eighth of them, and I shall call upon Mr. Whittam (who is an officer of the House of Commons, in whose possession those reports are) to produce them.

Then *George Whittam*, esq. came to the bar, when the clerk administered the oath as follows:

The evidence that you shall give upon the Impeachment of Henry viscount Melville shall be the truth, the whole truth, and nothing but the truth, so help you God, and the contents of this book.

*Mr. Giles.*—Are you clerk of the Journals of the House of Commons?

*Mr. Whittam.*—I am.

*Mr. Giles.*—Have you in your custody the reports of the commissioners appointed to examine the public accounts of the kingdom?

*Mr. Whittam.*—I have.

*Mr. Giles.*—Will you produce the third and eighth reports of the commissioners?

*Mr. Whittam.*—This is the third report, and this is the eighth [producing them].

[The witness was directed to withdraw].

*Lord Chancellor.*—Do you read the whole, or only a part?

*Mr. Giles.*—We wish only for a part; if the learned counsel for the defendant call for any other part we have no objection to its being read.

*Mr. Plumer.*—My lords, I am not apprized what part of the third report the honourable managers wish to select in support of the prosecution.—That third report appears to me an extremely material one—I am not at pre-



sent prepared to point out the specific passages I think material.

Mr. *Whitbread*.—My lords, the managers have no objection to the whole report being entered as read, and that will give the learned counsel the advantage of the whole.

Lord *Chancellor*.—Do the counsel for lord Melville consent to that course being adopted? if not, the whole must be read.

Mr. *Plumer*.—My lords, I am afraid the passages we rely upon must be read at some time or other, and, perhaps, it will not signify at what time that is done.

Mr. *Whitbread*.—It will perhaps save much time if the whole is read at once.

Then the third report of the commissioners of public accounts was read, and is as follows:

“To the honourable the knights, citizens, and burgesses, in parliament assembled.

“The third report of the commissioners appointed to examine, take, and state, the public accounts of the kingdom.

“Having finished our examinations of all those public accountants that came to our knowledge in the first class, as far as relates to the balances of public money in their hands, we, in the next place, directed our attention to those accountants who receive public money out of the Exchequer, by way of imprest, and upon account.

“The certificate of the accounts depending in the office of the auditors of the imprest, transmitted to us pursuant to our precept, furnished us with a list of these accountants: as much of this certificate as relates to the subject matter of this present report, is inserted in the Appendix. We took them into our consideration in the order in which they stand upon that certificate; a rule we pursue in regard to all lists of accountants, unless there is some special reason for departing from it.

“The set of accountants therein first mentioned, are the treasurers of the navy; and of these, the names that stand first are the executors of Anthony viscount Falkland, whose final account is dated the 4th of April 1689, and from whom a balance of twenty-seven thousand six hundred and eleven pounds six shillings and five-pence farthing, is declared to be then due. We did not mis-spend our time in a pursuit where there was so little probability of benefit to the public: a debt that has subsisted for near a century, may be presumed desperate. Passing over therefore this article, we issued our precepts to earl Temple, as representative of the late George Grenville, esquire; to lord viscount Barrington, lord viscount Howe, and to sir Gilbert Elliot, baronet, as representative of the late sir Gilbert Elliot, for an account of the public money in their hands, custody, or power, as late treasurers of the navy. The returns made to our precepts are set forth in the Appendix; from which it appears that the balances of

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public money remaining in their respective hands, upon the days therein mentioned, amounted together to the sum of seventy-six thousand seven hundred ninety-three pounds eighteen shillings and one penny farthing.

“That we might learn for what reasons, services, or purposes, these sums are permitted to remain in the hands of treasurers of the navy, so long after they are out of office, we examined several of the offices in this department, namely, George Swaffield, esquire, cashier of the victualling; Andrew Douglas, esquire, paymaster; Mr. Adam Jellicoe, chief clerk to the paymaster; and Mr. Francis Cook, ledger writer. By them we are supplied with the following information:

“The office of the treasurer of the navy is divided into three branches, the paymaster's, the cashier's, and the victualling branch. All the money he receives is for the navy services, and placed under, or carried over to one of these branches; the money in each branch is subdivided, arranged, and kept under various different heads of services; the whole balance, at the time he leaves the office, continues to be liable, whether it be in his hands or in the hands of his representatives in case of his death, to the same services for which its several parts were originally destined; and the commissioners of the Navy, Victualling, and Sick and Hurt offices, each in their several departments, continue to assign bills upon him for payment, until they have reduced his balance to such a sum as, in their opinions, will not be more than sufficient to answer purposes for which it has been usual to leave money with him, until his final account is passed. These purposes are, first, to carry on the recalls upon those ships books which were open in his treasurership, and the payment of the half-pay list and bounties to chaplains. The ships books are usually kept open for recalls for seven or eight years after the expiration of the treasurership, in order to give those seamen who, by being either turned over to other ships, or employed in other places, could not attend at the time their ship was paid, an opportunity of receiving their wages when it is in their power to apply for them. The only fund applicable to this service is the money in the pay branch, placed under the head of “to pay ships and carry on recalls:” this service is at an end when the ships books are made up. They are made up as they come in course in order of time; and after the last is closed, the half-pay lists are also closed, and the payment of the bounty to chaplains ceases.

“The other purpose is to pay the fees and expenses of carrying on, making up and passing his accounts. Upon passing every annual account, fees are paid to the auditors of the imprest, out of the money in his hands, under the head of “To pay Exchequer fees, and other contingent expenses of the Pay-office;” but upon passing his final account, there is a

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gratuity also paid in the following manner:—The officers and clerks who transact the business of the treasurer in office, carry on also at the same time, and finally make up the accounts of the treasurers out of office; for which extra work they have no salary or recompence whatever, until the final account is ready to be passed, at which time it has been usual for them, by petition to the lords of the Treasury, to obtain a reasonable allowance for their trouble, which has been paid them by virtue of a Treasury warrant, out of any money remaining in the hands of that treasurer, under whatever heads of service it may be placed. This gratuity, together with the fees of passing the annual accounts, and for the quietus, it is imagined, will exhaust the whole balance now remaining in the hands of lord Temple.

“All the ships books which were paid by Mr. Grenville, lord Barrington, and lord Howe, are made up, and consequently the balances which the three boards have left in the hands of these treasurers must be for the purpose of paying the fees and expenses of carrying on, making up, and passing their accounts. Of sir Gilbert Elliot's ship books, five hundred and six are still open for recalls; and payments, if applied for, are made upon them once a week; and therefore, whatever sums stand upon his account, in his paymaster's branch, under the heads of wages, half-pay, and bounties to chaplains, are still applicable to those services; and the residue of the money permitted to remain with him, is for the purpose of paying the fees and expenses of carrying on, making up, and passing his accounts.

“How soon then will these several sums be wanted for this purpose? the accounts of the treasurers of the navy are made up and passed as they come in course in order of time; the officers must finish one year before they begin upon another; and a subsequent treasurer's account is never finished till his predecessor's is finally closed. The state in which their accounts are, in the office of the auditors of the imprest, is this:—The last which is declared, is Mr. Grenville's account for the year 1758: of all the subsequent accounts, only some sections of their respective navy and victualling ledgers are delivered into this office; which parts of a treasurer's accounts are usually sent thither as speedily as they can be made up after the year expires.

“From an account of the balances remaining in the hands of these treasurers, at the times they respectively ceased to be treasurers; and an account of the times when their last ships books were made up; and a state of Mr. Grenville's balances, and of the balances of lord Barrington, lord Howe, and sir Gilbert Elliot, every year since they severally went out of office, all transmitted to us from the Pay office of the navy, pursuant to our requisitions, we find that Mr. Grenville resigned this office in 1762, and his last ship's

book was made up in 1771; that lord Barrington resigned this office in 1765, and his last ship's book was made up in 1775; that lord Howe resigned this office in 1770, and his last ship's book was made up in 1778; and that sir Gilbert Elliot died in 1777: hence it appears, that for near nineteen years there has been in the hands of Mr. Grenville, or of his representatives, and for fifteen years in the hands of lord Barrington, and for ten years in the hands of lord Howe, and for three years in the hands of the representatives of sir Gilbert Elliot, considerable sums of public money (exclusive of the sums on the heads of wages, half pay, and bounty to chaplains), destined to purposes which (except the passing three years of Mr. Grenville's accounts) have not yet existed, and which, if we may judge from the progress hitherto made in passing these accounts, are not likely soon to exist.

“Where public money is appointed for a service or purpose to arise at a future time, we are of opinion, the public alone ought to have the custody and use of that money, in the mean time, and until the service or purpose calls for its application.

“When the fees and the gratuity become payable, we see no reason why the treasurer in office should not pay them, in like manner as the treasurers out of office pay them now.

“We did not form our opinion upon these balances without first hearing the late treasurers themselves, or the representatives of those who are dead; and therefore we examined earl Temple, lord viscount Barrington, lord viscount Howe, and sir Gilbert Elliot, baronet; not one of whom made any objection to paying their balances into the Exchequer, upon condition, some of receiving their quietus, others of being made secure in such payments. We do therefore conceive, that the balances of public money, now remaining in the hands of earl Temple, as representative of the late George Grenville, esquire, and in the hands of lord viscount Barrington, and of lord viscount Howe, and of sir Gilbert Elliot, baronet, as representative of sir Gilbert Elliot, late treasurers of the navy, ought to be paid into the Exchequer, for the public service, leaving in the hands of sir Gilbert Elliot the sums in his account placed under the heads of wages, half pay, and bounties to chaplains, to carry on the services to which the same are applicable; that such payments should be without prejudice, and a proper security and indemnification be given to each of them against any loss or detriment that may accrue to them in consequence of such payments.

“The right honourable Welbore Ellis, the present treasurer of the navy, returned to our requisition, a balance in his hands upon the 31st of August last, of three hundred forty-eight thousand nine hundred forty-one pounds eleven shillings and nine-pence. The act directs us to examine into all balances in the hands of public accountants, for the purpose



of considering what sum may be taken out of their hands to be applied to the public service. It is obvious, we could not examine the balance in the hands of the treasurer in office with this view; it could not be in our power to say, that any part of it ought to be paid back into the Exchequer, because, in an office of so constant and large an expenditure, this sum must probably be exhausted, even while it was under our consideration; but it was competent to us, and we thought it our duty, to examine whether this was a larger sum than the current business of the office required should at that time be entrusted to the treasurer of the navy. A comparison between the quantum of the sum, and the demands upon it, would enable us to form some judgment upon this point; with this view we examined the present treasurer himself, Timothy Brett, esquire, commissioner of the navy and comptroller of the treasurer's accounts, John Slade, esquire, commissioner of the victualling, and John Bell, esquire, commissioner of the sick and hurt; from whom we collect the following information.

"All the money received by the treasurer, for the services of the navy, is either issued to him out of the Exchequer, or paid to him by sundry persons, in pursuance of the directions of the navy, victualling, or sick and hurt boards. The money from the Exchequer is issued to him, and arranged in his accounts under various heads of services; these heads are kept distinct; and he cannot place or transfer a sum issued to him under one head, to any other head of service. All bills assigned upon him for payment by these boards, specify the correspondent head of service out of which that bill is to be paid, and he must not pay it out of money placed under any other head of service than that so specified on the bill.

"When money is wanted, the application for it never originally moves from the treasurer, except in the single instance of money to pay fees, and other contingent expenses; this he craves of himself, when that fund is nearly exhausted: in all other cases, the board, in whose department it is, by letter, desire him to present a memorial to the lords of the Treasury, specifying the sum wanted, and for what particular service; the memorial pursues the letter, and the issue is directed from the Exchequer in the terms of the memorial. The treasurer immediately certifies to the navy board the whole sum he receives, and to the other boards, so much of that sum as concerns them; he also transmits to the navy board an account of all his receipts and payments in the cashier's and victualling branch every fortnight, and in the pay branch every month; by these means they have an exact knowledge of the state of his balance under each head of service. Each of these boards enter in their books all the assignments they make upon him for payment; of which they transmit to him a list; hence they know what

the actual demands upon him amount to; and from their experience in the course of the navy business, they can form some conjecture relative to the probable approaching demands that may be made upon him in the various branches of the service. By such knowledge and conjecture these boards are guided in their directions to the treasurer, as to the time when, the quantum of the sum, and the service for which every application for a supply is to be made to the Treasury.

"At the end of every month the navy board transmit to the Treasury a certificate, containing an exact state of all the receipts and payments made by the treasurer during that month, as they appear from their books; hence the lords of the Treasury have full knowledge of the state of his balance every month: this certificate for the month of August last we procured from the Navy office, on which the balance in the hands of the treasurer appears to be two hundred sixty thousand seven hundred sixteen pounds one shilling and eight-pence farthing.

"Being made acquainted thus far with the course of business in this office, our next step was to resolve this balance of three hundred forty-eight thousand nine hundred forty-one pounds eleven shillings and nine-pence into its constituent parts, and compare the quantum of each part, as far as we could, with the actual and probable demands of service upon it on the 31st of August, the date of his return.

"The first circumstance that engaged our attention, was a difference between the treasurer's balance and the navy balance, upon the same day, the 31st of August, the former exceeding the latter by the sum of eighty-eight thousand two hundred twenty-five pounds ten shillings and three-farthings; this difference lies in the cashier's and victualling branches, and arises from the following cause:—when the three boards assign bills upon the treasurer for payment, they immediately give him credit for those bills, in his account kept at their offices; but the treasurer does not himself take credit for any bills in his own account till he actually pays them. The persons who receive these bills do not always immediately present them to the treasurer for payment, but frequently keep them in their possession for a considerable time. The treasurer's balance must, therefore, exceed the navy balance, as much as the sum of the bills assigned upon him for payment exceeds the sum of the bills actually paid by him. We conceive this excess is not money for which the treasurer is accountable to the public, but belongs to the proprietors of those bills, and remains in his hands, at their risk, until they apply to him for payment. This sum, therefore, we think, should be deducted from his balance.

"We, in the next place, observed that several sums in each branch were not actually in the hands of the treasurer, but of his offi-



cers and clerks, either carrying on services in London, or at the distant ports, whither these sums were directed to be sent by the navy board, to carry on the services at those ports: it may reasonably be presumed that the boards would not have directed into the hands of the officers, nor the treasurer have entrusted them with, larger sums than were wanted; and therefore these sums too, may be deducted from the treasurer's balance; which will reduce the public money actually in his hands to the sum of one hundred twenty-eight thousand eighty-three pounds sixteen shillings and ten pence farthing, as appears by the state inserted in the Appendix. The constituent parts of this balance, under their several heads of service, consisting of a variety of articles, are stated in the navy certificate; some of them carry the appearance of having been applied for sooner than the services seem to have required; but, upon examination, we find that the boards do not direct an application for a supply to any fund, until they know that fund is nearly, or likely soon to be exhausted. The Treasury are sometimes prevented from granting the issue until many days after it is craved; and therefore the boards are careful to apply early enough, to guard against the hazard of a demand upon an exhausted fund. To search into the actual and probable demands, at that time, upon each of these sums, was hardly practicable; one circumstance alone might enable us to judge with sufficient accuracy, whether the sum total was too large or not; that is, in what time this balance was in fact paid away by the treasurer. It appears from his accounts for the month of August, that this whole balance, and much more, was received by him during that month; and by his accounts for the month of September, transmitted to us pursuant to our requisition, it appears, that not only the balance remaining on the 31st of August, but a much larger sum, was in fact paid away by him during the succeeding month. Considering, therefore, this sum by itself, independent of, and unconnected with, his other receipts and payments, prior and subsequent to the date of this balance, we have no grounds to say that this individual sum, received in one month, and paid away in the next, was more than the service required should be in the hands of the treasurer of the navy upon the 31st of August last.

"But it was necessary to extend our inquiry still farther. What is the amount of the sum that has been continually in the hands of the treasurer of the navy, and has that sum been more than the current services required? To come at this knowledge, we obtained from the Navy office an account of the total sums received and paid by the treasurer of the navy for every month, from the first of January 1779 to the 31st of August last, with the total of the balances remaining in his hands at the end of each month, as they ap-

pear in the monthly certificates to the Treasury.

"As the public money should pass without delay from the pocket of the subject into the Exchequer, so it ought not to issue out of the Exchequer, either before it is wanted, or in larger sums than the service for which it is issued requires. By this last account, a very large sum has been constantly in his hands, during the period therein mentioned, exclusive of the amount of bills assigned upon him, but not presented to him for payment. The principal cause of the magnitude of this balance is, the practice in this office, of not applying money issued under one head, towards satisfying a demand upon any other head of service; the consequence of which is, when the money upon the account of any head of service is nearly exhausted, a supply must be procured for that service, how abundant soever the sums upon other heads of accounts, or the sum total of his cash, may be. Were all the sums he receives to constitute and be considered as one common general cash, and be applied indiscriminately to every service, a much less sum than the lowest of the balances in the account last-mentioned would, in our opinion, suffice to carry on the current services of the navy, even various and extensive as they now are. It would create no confusion in the accounts; for the receipts and payments under each head of service might still be kept distinct; and though the payments might frequently exceed the receipts on some heads of accounts, yet the treasurer would not be without sufficient cash, and the next issue from the Exchequer would restore the balances. What the sum necessary for carrying on the service should be, must depend upon circumstances; it will be different at different times, and must be left principally to the discretion of those commissioners from whom the direction for supplies moves, who, being conversant in the business can best determine. But, to enable the lords of the Treasury likewise to judge of the propriety of, and be a check and control upon, the requisition, we are of opinion, that, besides the certificate sent every month from the navy board, an account of the sum total of the balance in the hands of the treasurer of the navy should be inserted in every application for a supply to the Treasury.

"We have not been inattentive to defects we have observed in this office during the course of our inquiries; defects which concern the officer, the office, and the public.

"The treasurer finds his business does not end with his office; his accounts are still open: he goes on, receiving and paying, until he feels himself, his family, and his fortune, subject to all the evils of long public accounts far in arrear, and the difficulties of rendering an account increasing daily: he continues responsible for millions, without an expectation of obtaining his final discharge during his life.

"The office is perplexed with the multipli-



city of these accounts.—There are four distinct accounts of four treasurers of the navy, at this time open at the Pay office, and business is carried on upon every one of them at the same time, by the same officers, when the current business of the present treasurer alone would find employment enough for them all.

“There have been issued to three of these treasurers, for the navy services, upwards of thirty-three millions, the accounts of which are not passed; exclusive of above twenty-five millions to the late Mr. Grenville, whose final account is not yet settled; and of sixteen millions to the present treasurer, none of whose accounts could as yet be settled.

“The navy accounts in July last, when the imprest certificate was transmitted to us, were in arrear in the office of the auditor of the imprest twenty-two years. This delay is occasioned by the accounts of the subsequent years not being made up at the Pay office of the navy, where there is a want of officers and clerks for this department. A sufficient number of persons, intelligent in this branch, should forthwith be provided by the proper authority, with adequate salaries, for the sole purpose of proceeding upon, bringing forward, and making up these accounts, with as much dispatch as the nature of the business will admit.

“By this delay in making up the accounts, the public loses the use, at least, of considerable sums of their own money; not that the principal itself has always been safe. A defaulter of above twenty-seven thousand pounds stands at the head of the list of treasurers of the navy upon the imprest certificate.

“We inquired why a treasurer, under the present constitution of the office, might not, upon his resignation, immediately pay over his balance to the successor, or into the Exchequer, and all the subsequent transactions of office be carried on by the treasurer for the time being. Two reasons were assigned for the necessity of keeping open his accounts, though out of office.

1st. “That sufficient time may be given to his sub-accountants to clear their imprests.

“The sub-accountants are certainly very numerous; and as, according to the present mode of passing these accounts, they must all be set *insuper* upon the final account, was that account to be made up soon after the expiration of the treasurership, it would be very voluminous and troublesome to the office. But, since the treasurer in office does not clear the imprests of some of his predecessors, and can clear the imprests of all, and the three boards can, at their pleasure, call upon the sub-accountants to clear their imprests, we do not think this reason conclusive.

2nd. “That the payment of his ships books may be completed.

“A ship's book is the voucher for the treasurer who pays it: two cannot pay upon the same book; it would create confusion, as the payments of the one could not, without great trouble and difficulty, be distinguished from those of the other; it could not therefore be made a voucher for two treasurers. To enable a treasurer in office to carry on the payment of a ship's book, open in the time of his predecessor, the names of all the seamen not paid must be abstracted, and entered in a new book; a work of great labour and length of time, where the books are so numerous; and during all that time no payment of wages could be made to the seamen unpaid upon those books.

“Upon the examination of a ship's book, there appears a foundation for this objection, which opens a door for a possible mischief, worthy consideration. It is in the power of a treasurer of the navy, retiring in disgust, to refuse carrying on any more payments, and by that means to put a stop, for eight months or more, to the payment of all the seamen on the numerous volumes of ships books open at the several ports in his treasurership. Mr. Grenville left open above thirteen hundred. This evil does not rest in speculation: we have an instance of it in evidence. The office that does not guard against the possibility of such an evil, is fundamentally defective.

“These defects should be speedily corrected. To alter the constitution of the office: to abolish the subordinate treasury; to render a treasurer the mere accountant, and to vary the mode of accounting, carry with them a strong appearance of an effectual remedy: but were we, in the present state of our inquiries, to come to decisions of such moment, we should be premature, perhaps rash. It is easier to see the defects than to supply the regulation. The pay of the navy is an important object, and any alteration in the mode should be well weighed before it is adopted; it should be traced through all its effects, and perfectly ascertained to be as feasible in practice as it is specious in theory. To disturb, to confound, or to delay (effects not unfrequent, when novelty of form is introduced, and new principles applied to an old office) might be attended with very serious consequences.

“The defects, to which we have alluded, presented themselves in the course of an examination made, in obedience to the act, for a more limited purpose. Coming, however, before us, they are, in our opinion, too important to be passed over in silence: we thought it our duty to point them out, that, should they be deemed a proper subject for the exercise



of the wisdom of the legislature, the solid advantages which would result to the public from their correction might not be delayed. Had we protracted this report until we were possessed of materials for a well-grounded opinion upon these points, we must have disobeyed the act, that enjoins us to report, in the first place, upon the balances in the hands of accountants in this session of parliament, to the end that the public money, long ago issued, and still remaining in their hands, may with all convenient speed be restored to the possession of the public.

|                     |                          |
|---------------------|--------------------------|
|                     | GUY CARLETON, (L. S.)    |
| Office of Accounts, | T. ANGUISH, (L. S.)      |
| Bell-yard,          | A. PIGGOTT, (L. S.)      |
| 6th March, 1781.    | RICH. NEAVE, (L. S.)     |
|                     | SAM. BEACHCROFT, (L. S.) |
|                     | GEO. DRUMMOND, (L. S.)   |

Mr. *Giles*.—The managers are desirous that your lordships should order the Appendix to be entered as read, and they will proceed to read the Journal of the House of Commons, to prove that this report was presented to the House of Commons on the 7th of March 1781.

Mr. *Plumer*.—My lords, the evidence that is now offered to your lordships, of the date at which that report was presented to the House of Commons (and which fact your lordships, I understand, called for the Journals of the House of Commons to authenticate), is a printed book.

Lord *Chancellor*.—Where are the original Journals?

Mr. *Plumer*.—I take the liberty of suggesting that I have no objection to this being read, for the purpose of saving time, if the originals are sent for, and will afterwards be produced;—but the honourable managers seem to conceive themselves at liberty to produce this as proper original and substantive evidence of itself; that is to say, that a printed copy is evidence of the original, the original being in their possession and capable of being produced.—It is not the best evidence; it is a copy; the original is in existence, and can be produced, and therefore I am quite at a loss to conceive why the honourable managers, after what I have suggested in private, should be anxious that this secondary evidence, in the absence of the principal and original evidence, should be introduced on the present occasion.—I hope your lordships will excuse me, and not suppose I am suggesting this for the purpose of taking up your lordships time; but I conceive that it is my duty to attend to every stage of a cause of this importance, before this august tribunal, where every step will form a precedent in future, by which the proceedings of every court are to be regulated, which may affect the fortune and character, and lives of every subject who may hereafter have the misfortune to stand in judgment; I hope your lordships will think I do not tres-

pass upon your time in submitting an objection to the competency of this evidence.

Mr. *Adam*.—Your lordships will favour me with a very few words in addition to what has been stated by my learned friend—it is not our wish to delay the proceedings; because we stated that we were willing to allow the entry from this book, according to a phrase used in Westminster-hall, *de bene esse*, till the original was brought; but we learned that it was to be contended, that this book was good legal evidence—now that is what we, either as concerned for the noble person, whose case is now under your lordships consideration, or as a precedent for future times, cannot admit.

My lords, your lordships know, in the first place that this is not the best evidence that the nature of the thing will admit of; it is not the original, but a transcript of that Journal furnished by printing. In the next place, it is not an examined transcript; but even that would not do.—And, lastly, your lordships know perfectly well, that in another course of proceeding, which is extremely familiar to your lordships, which is of a similar nature, this species of evidence is never admitted; but that when a case of peerage is under your lordships consideration, in a committee of privileges, your lordships to determine on a right of peerage, require, that the original Journals of your own House should be produced in evidence. Now, if your lordships are not content to take a transcript of the Journals of your own House, as evidence, in the matter of a mere civil right and title of honour, I am sure your lordships will not think we act with an improper discretion in pressing your lordships to have the original Journal here; or, at least, that if this is to be read now (to which we make no objection), the original Journal should be brought, in order that the printed copy may be compared with the original afterwards, that we may find whether there is any variation between the best evidence, that the nature of the thing will admit of, and the secondary evidence.

Mr. *Solicitor General*.—My lords, the managers for the House of Commons have certainly not come prepared to argue before your lordships, a question which it did not enter into their imagination would be made at your lordships' bar; but, my lords, we conceive it to be a rule of evidence, founded and established, and settled upon one of the most solemn and important occasions, namely, the trial of a nobleman for his life, charged with the crime of high treason, that the printed Journals of the Houses of Lords and Commons, were evidence of the proceedings of those Houses. Upon the trial of my lord George Gordon, that question was decided by the court of King's-bench, and it has been acted upon, as we conceive, on all subsequent occasions. Certainly, my lords, it is a matter of very little importance whether your lordships are to receive the printed Journals in evidence, or we are to send to the House of



Commons for the original Journals; but it occurs to us, that it does not become the managers for the House of Commons to give up a point that has been so fixed and settled, and after great consideration, and upon so important an occasion as that which I have mentioned to your lordships; we conceive therefore that the evidence we have offered to your lordships, is sufficient evidence for the purpose for which we produce it.

*Lord Chancellor.*—Can the managers for the House of Commons state that the printed Journals of the House of Lords, or of the House of Commons, were objected to by the prisoner's counsel, on the trial of lord George Gordon, and that, nevertheless, the court of King's-bench decided that they might be read in evidence? because I do not recollect the circumstance, and I think it could not have been so determined.

*Mr. Solicitor General.*—If any of your lordships conceive that any doubt whatever can be entertained upon this point, we are so anxious that no delay should take place upon this trial, that, rather than take up your lordships' time with having the question argued and decided by your lordships, we will send for the original Journals, protesting, however, that we are not bound so to do.

*Lord Chancellor.*—I certainly have always considered the course in the courts of law to be, that original public documents need not be produced, which are not only not removable at the call of individuals, but which, from their nature, might be necessary as evidence in different places at the same time; but in those cases you must have one of two things, either you must have an office copy, where there is any particular authority given for taking such office copies, or an examined copy, sworn to at the trial by the witness producing it;\* and the printed Journal, if the party so producing it had examined it with the original, would be as good evidence as the original Journal itself; but unless your copy be so examined, you must produce the original Journal.

*Mr. Plumer.*—That was precisely the point in the case referred to.

*Mr. Giles.*—My lords, I do not know whether your lordships have observed that we wish not to trouble your lordships with reading the Appendix to the third Report; but that we are anxious it should be entered as read, the counsel for the defendant consenting to that course.

*Mr. Plumer.*—I shall certainly have occasion to refer your lordships to one part of the Appendix. I do not wish to trouble your lordships with hearing it read; but in the report, which has been read, it is stated, that certain persons, ex-treasurers, and representatives of ex-treasurers, were examined; their examination is referred to by this report; part

of that examination appears to me to be material: I do not wish to trouble your lordships to hear it read now; but I shall humbly request, if it is consistent with the forms of your lordships' proceedings, that that Appendix should appear upon your lordships' minutes.

*A Lord.*—My lords, every feeling that I have as to the present proceedings, as they affect the public and the noble individual now at your lordships' bar, would induce me to give my consent, if I dare to do it, to such a measure, as the entering certain proceedings, not read, as if they were read; but we are now forming the highest tribunal in this kingdom; the example of this tribunal will be looked to by those who may hereafter succeed to our duty upon solemn occasions of this kind, and that example will be looked to also.

*Lord Chancellor.*—If there is any doubt upon this, I believe your lordships must adjourn to the Chamber of Parliament; but I confess it does not appear to me to be necessary.

*A Lord.*—I wish simply to call your lordships attention to this—I think it is quite objectionable in principle, in a criminal proceeding, to have any thing entered as read, which is not read.

*Mr. Whitbread.*—My lords, the managers for the Commons wish to be instructed in your lordships' pleasure, whether the Appendix shall be now read.

*Mr. Plumer.*—My lords, the only part of the Appendix, which, on the part of the defendant, I desire should be read in evidence, consists, as I have already stated to your lordships, of the examinations of the ex-treasurers, or their representatives; they are very short, and form a very small part of the Appendix. I have pointed that out to the clerk—they are distinct and unconnected with any other part of the Appendix.

*Mr. Giles.*—My lords, the managers for the House of Commons have no objection to the proceeding now proposed by the counsel for the defendant, provided it is understood that they may at any future time, if it be found necessary, read any other part of the Appendix.

Then several papers in the Appendix were read, and are as follow:

*Appendix, No. 16.*

The Examination of the Right Honourable Earl Temple, taken upon oath, the 2nd of November, 1780.

His lordship saith, That the sum of twelve thousand three hundred and sixty pounds three shillings and four-pence three-farthings, mentioned in the return made by him to the board on the 13th of October last, is, to the best of his knowledge and belief, the whole balance remaining in his hands, as personal representative

\* R. v. Lord George Gordon, 2 Doug. 593  
Jones v. Randal, Cowp. 17.



of the right honourable George Grenville, as late treasurer of the navy.

That he knows of no other public services to which the sum in his hands is applicable, except the services for which it was granted, and the fees of passing the accounts.

That it would be his most earnest wish, to be allowed to pay it into the Exchequer, upon two months notice, and having his quietus.

GUY CARLETON. NUGENT TEMPLE.  
T. ANGUISH.  
A. PIGGOTT.  
GEO. DRUMMOND.

*Appendix, No. 17.*

The Examination of the Right Hon. Lord Viscount Barrington, taken upon oath, the 7th of November, 1780.

His lordship saith, that the sum of thirteen thousand seven hundred and sixty-three pounds seven shillings and one penny three farthings, mentioned in the return made by him to this Board upon the 21st September last, is, to the best of his knowledge and belief, the whole balance then remaining in his hands, as late treasurer of the navy.

That he knows of no other public service to which this sum is applicable in his hands, except the services for which it was granted, and the fees of passing his accounts.

That he has no objection to pay the balance into the Exchequer, when he can do it consistent with his own safety, as an accountant to the public.

BARRINGTON.

T. ANGUISH.  
SAM. BEACHCROFT.  
GEO. DRUMMOND.

*Appendix, No. 18.*

The Examination of the Right Hon. Lord Viscount Howe, taken upon oath, the 9th of November, 1780.

His lordship saith, that the sum of twenty-three thousand one hundred and six pounds eleven shillings and five-pence three farthings, mentioned in the return made by him to this Board upon the 10th of August last, is, to the best of his knowledge and belief, the whole balance then remaining in his hands, as late treasurer of the navy.

That the above balance is solely applicable to the services specified in the said return.

That he is ready to pay the above balance into the Exchequer when so required.

HOWE.

T. ANGUISH.  
SAM. BEACHCROFT.  
GEO. DRUMMOND.

*Appendix, No. 19.*

The Examination of Sir Gilbert Elliot, Baronet, taken upon oath, 3rd of November, 1780.

This examinant saith, that the sum of twenty-seven thousand five hundred and sixty-three pounds sixteen shillings and one penny, mentioned in the return made by his direction to this Board on the 16th of October last, is, to the best of his knowledge and belief, the whole balance of public money then remaining in his hands, as the personal representative of the right hon. Sir Gilbert Elliot, as late treasurer of the navy.

That he knows of no other public services to which this sum is applicable in his hands, except the services for which it was granted, and the fees of passing his accounts.

That he has no objection to pay the balance into the Exchequer upon having his quietus.

GILBERT ELLIOT.

GUY CARLETON.  
T. ANGUISH.  
SAM. BEACHCROFT.  
GEO. DRUMMOND.

Mr. Giles.—The next allegation in the preamble which the managers propose to prove is, that the reports of the commissioners were taken into consideration by the House of Commons, and certain resolutions agreed upon on the 19th of June, 1782. I now propose to read these resolutions from the printed Journals, which I suppose will not be objected to, as the originals are here.

Then an entry in the Journals of the House of Commons was read, and is as follows:

*Mercurii, 19<sup>o</sup> die Junii, 1782.*

Resolved, That it is the opinion of this committee, that some regulations ought to be adopted for the purpose of lessening and keeping down the balances of public money, which appear to have usually been in the hands of the treasurer of the navy, and that it would be beneficial to the public, if the first and other clerks in the different branches belonging to the said office, were paid by fixed and permanent salaries, in lieu of all fees, gratuities, and other perquisites whatsoever.

Resolved, that it is the opinion of this committee, that from henceforward the paymaster general of his majesty's land forces, and the treasurer of the navy for the time being, shall not apply any sum or sums of money imprested to them, or either of them, for any purpose of advantage or interest to themselves, either directly or indirectly.

Mr. Giles.—The sixth report of the commissioners was presented to the House of



Commons before this resolution was come to, but the clerk did not bring it with him when he brought the others; and I will therefore, with your lordships leave, proceed to other evidence. The next allegation in the preamble is, that his majesty, by warrant bearing date the 22nd of June, 1782, was pleased to augment the income of the right hon. Isaac Barré, as treasurer of his majesty's navy, and to add thereto the sum of two thousand one hundred and fifty pounds. I shall now offer to your lordships evidence of that warrant, and I propose to prove it, by an entry made of it at the Treasury.

Then *William Mitford*, esq. was called in, and being sworn, was examined as follows:

*Mr. Giles*.—What situation do you hold at the Treasury?

*Mr. Mitford*.—Chief clerk in the Treasury.

*Mr. Giles*.—What book have you brought with you?

*Mr. Mitford*.—A book belonging to the Treasury, in which the king's warrants are entered.

*Mr. Giles*.—Do you find a warrant to increase the salary of the right hon. Isaac Barré, treasurer of the navy, dated the 22nd of June, 1782?

*Mr. Mitford*.—It is in the book I hold in my hand.

*Mr. Giles*.—I propose the witness should read the entry of the warrant in the book.

*Mr. Plumer*.—With great submission, as the evidence now stands, I conceive this is not the proper evidence to substantiate the allegation contained in the preamble, which states, that his majesty, by warrant under his royal sign manual, dated the 22nd day of June, 1782, augmented the income of the right hon. Isaac Barré; the point is to be proved by the warrant of that date in the usual way; instead of producing the warrant, they have brought a book. The regular and correct evidence is, the warrant itself. I do not at present know what this book is, or that it can authenticate that warrant, unless it is preceded by some evidence that will make any copy of that warrant, or any secondary evidence, admissible.

*Lord Chancellor*.—Is it an entry before the warrant is made or after?

*Mr. Mitford*.—An entry from his majesty's warrant, after the signature by his majesty and three lords of the Treasury.

*Lord Chancellor*.—Is that a regular book kept in the office, in which every warrant, after it has received the royal signature, is so entered?

*Mr. Mitford*.—Not absolutely every warrant, but it is a general book for the entry of warrants.

*Lord Chancellor*.—By whom is the warrant that has so received the royal signature brought to your office to be so entered?

*Mr. Mitford*.—By the first lord of the Treas-

ury, who procures the signature of his majesty.

[The witness was directed to withdraw.]

*Mr. Giles*.—The managers wish to call *Frederick Booth*, esq. to prove the loss of the original.

Then *Frederick Booth*, esq. was called in, and being sworn, was examined as follows:

*Mr. Giles*.—Were you one of the executors of the right hon. Isaac Barré?

*Mr. Booth*.—I was one of the executors named in the will; lord Amherst, sir Evan Nepean, and myself, were the three executors under Mr. Barré's will. The will was not proved by the executors; it was renounced, I believe, in favour of the marchioness Townshend, the residuary legatee; and these papers were therefore, I believe, delivered by lord Amherst and sir Evan Nepean to the marchioness Townshend.

*Mr. Giles*.—Have you examined Mr. Barré's papers?

*Mr. Booth*.—Upon my receiving notice to produce the patent and the warrant, I wrote to lady Townshend, knowing that the papers were with her, to request I might have them sent. Those papers her ladyship had, have been sent to me; I have searched them, and I cannot find either the one or the other.

Then *Frederick Booth*, esq. was cross-examined, as follows:

*Mr. Plumer*.—Did you act as executor yourself?

*Mr. Booth*.—No.

*Mr. Plumer*.—Did you possess yourself of the papers of the deceased, or do any act in the character of executor before the probate of the will was renounced?

*Mr. Booth*.—No.

*Mr. Plumer*.—Then you know nothing at all of any of the papers of Mr. Barré since his death?

*Mr. Booth*.—I know only of those papers that were sent to me upon my application to the marchioness Townshend, she then being at Raynham; a box of papers (I believe all his papers) came to me for the purpose of examination, in order to produce the warrant.

*Mr. Plumer*.—What knowledge have you that the box of papers sent to you were, in fact, part of the papers of the late Mr. Barré, except by hearsay, and from the marchioness Townshend?

*Mr. Booth*.—By having gone through these papers soon after the marchioness Townshend had the probate granted to her, which was obtained by the marchioness before she went to Norfolk.

*Mr. Plumer*.—Do you collect that these were the papers of colonel Barré, from the information of the marchioness Townshend?

*Mr. Booth*.—Yes; and knowing these pa-



pers to be the papers, or part of them, that I went through soon after administration was granted to lady Townshend.

Mr. *Giles*.—From whom did you receive these papers when you first saw them?

Mr. *Booth*.—They were in the possession of lady Townshend.

[The witness was directed to withdraw.]

Mr. *Giles*.—My lords, the managers for the Commons were not apprized that the papers were in the possession of lady Townshend; if the counsel for the defendant think fit to object to reading the entry of the warrant in the book from the Treasury, and your lordships are of opinion that that entry cannot be read, it will be necessary, certainly, for the managers to take measures to bring lady Townshend, as a witness, before your lordships.

Lord *Chancellor*.—Unless the objection is waived, I am of opinion, you cannot read that entry from the book. Let Mr. Mitford be called again.

Then *William Mitford*, esq. was again called in, and examined as follows:

A *Lord*.—Are you acquainted with the hand-writing of the clerk who made the entry in the Treasury book?

Mr. *Mitford*.—I am not.

Mr. *Plumer*.—Was any part of the entries in that book made by yourself?

Mr. *Mitford*.—They were not.

Mr. *Giles*.—Where should the original warrant be regularly deposited?

Mr. *Mitford*.—I presume at the Auditor's office, before whom the account is passed; but I only speak from the probable course of business.

[The witness was directed to withdraw.]

Mr. *Giles*.—My lords, we will now call the clerk of the Auditor's office to prove that the original warrant is not in that office.

Then *Bernard Cobbe*, esq. was called in, and being sworn, was examined as follows:

Mr. *Giles*.—Are you a clerk in the Auditor's office?

Mr. *Cobbe*.—No.

Mr. *Giles*.—In what situation are you?

Mr. *Cobbe*.—I hold the situation of one of the inspectors general of accounts.

Mr. *Giles*.—Have you made any search in the office for a warrant granting to Mr. Barré an increase of salary, when he was treasurer of the navy?

Mr. *Cobbe*.—The warrant is not to be found in the Auditor's office.

Mr. *Giles*.—Is the Auditor's office the place in which such warrant ought regularly to be?

Mr. *Cobbe*.—No; the warrant is brought for entry, and taken away to be entered at other offices; the patent and warrant were brought to the Auditor's office for entry; while it was entering it was fetched away, and the entry of the warrant is not complete; when

the accounts came to be audited, we obtained a copy of the entry from the books in the Navy office.

Mr. *Plumer*.—But if that entry had been complete, would the warrant have been left there?

Mr. *Cobbe*.—No.

Mr. *Whitbread*.—It has now been shown that the warrant is not to be found either in the Exchequer, or the Auditor's office; and it has been shown, by Mr. Booth, that the warrant was not amongst those papers which were put into his hands; further we must go, undoubtedly.

Mr. *Giles*.—If it is insisted upon we certainly cannot propose to read this entry without producing lady Townshend; we thought the papers had been in the possession of Mr. Booth.

Mr. *Plumer*.—I hope that will not be supposed to be the ground of our objection on the part of the defendant. If lady Townshend were here, and had authenticated these papers, not only to be the papers of colonel Barré, but to be all the papers of colonel Barre, and it was not among those papers, my objection would hold precisely the same then as it will now; because I conceive, with great deference, that the legal custody, the natural custody of a warrant is not the private custody of the individual, or the representative of an individual who is to be benefited by that warrant. The warrant is deposited in a public office; it is the authority to that public office to pay the individual the salary he is entitled to receive; and therefore, if they had negatived the existence of any trace of a warrant, among any of the papers left by colonel Barré, by all the proper evidence, the objection I take would still remain to the secondary evidence the managers offer to produce.

Mr. *Whitbread*.—The managers would be sorry your lordships' time should be occupied by calling persons from all the public offices, by which it would at last appear, there is no office where there was a legal deposit for these warrants; it will be proved that these warrants are always in the custody of persons in whose favour they are granted; and that a person having such a warrant is not bound to deposit it in any other custody whatever.

Lord *Chancellor*.—The counsel for lord Melville say, that their objection is not obviated by this evidence; but, until the whole evidence is produced, it is impossible to give a decision upon the point.

Mr. *Whitbread*.—With your lordships leave we will postpone this until a further witness shall be called; and after that, I trust your lordships will be satisfied.

Lord *Chancellor*.—Do you know who the person was that took away the warrant whilst it was in the office for entry?

Mr. *Cobbe*.—I do not.

[The witness was directed to withdraw.]

Mr. *Giles*.—As the counsel for the defen-



dant think fit to insist upon their objection, the managers for the Commons, with your lordships' permission, to save time, postpone the proof of this allegation till they are able to produce lady Townshend before your lordships.

The next allegation I propose to prove is, the appointment of lord Melville (then the right honourable Henry Dundas) to be treasurer of his majesty's navy, which I shall do by the production of his patent, bearing date the 19th of August, 1782. The patent is under the great seal, and I produce the original.

Mr. Plumer.—I beg to say one word as to the course the honourable manager has suggested that he means to take respecting the last piece of evidence. I beg it may not be understood, that if we can privately be informed, that the box of papers in the custody of Mr. Booth, does, in point of fact, contain all the papers of the late colonel Barré, that we shall not be perfectly ready to admit that to be the fact, without giving lady Townshend the trouble of attending personally to prove it. But when that fact is established, your lordships will understand, that I do not conceive the managers then will be in a situation to offer the secondary evidence; yet, as far as that goes, if we can be assured, though not by legal evidence, but by private information, that the box contains all the papers of colonel Barré, we shall be content to let that point be considered as if it were proved by legal evidence.

Mr. Adam.—The course of proceeding with regard to the warrant, I take to be this; and if what I state should be acquiesced in by the managers, it would remove the difficulty, and relieve the managers from the embarrassment (which I am sure the noble person whom we defend must feel as much as any individual who exists), of being put to the necessity of calling a noble lady here, for the purpose of being examined in a preliminary question of this sort. Though it is a preliminary question, it is a question upon the admissibility of evidence of very great importance; but I think we may get rid of it without making any admission that would be unfit for us to make. I take it, that the course when a warrant for the payment of money is subscribed by his majesty, and countersigned by the lords of the Treasury, is this; that the warrant must be carried to the Treasury, to be entered, and carried to the other offices, where it may be necessary to do any thing in future times in respect of that warrant;—so in this case it was carried to the officer for passing the public accounts, and from thence it was carried away before the entry was complete; but that person has stated that it was carried to the Navy office, and from thence they had a complete entry, which explains the course of this warrant. It was not a warrant according to the ordinary form of payment, at the Exchequer; but was to be paid out of

certain naval money, which resulted out of certain naval stores ordered to be sold, and out of other matters, and was therefore carried to the proper officer, in the Navy office, to be entered: and then, according to the common course, it must have come back to the party to whom the warrant was granted, and from his custody it must have gone to his executors.

Now we are ready to admit this upon the declaration of those who have examined these books, as my learned friend, Mr. Plumer has stated it—that it was not to be found among the papers of the late colonel Barré; and under that admission it is perfectly unnecessary to call lady Townshend to give evidence before your lordships; and it is equally clear, that the best evidence, which by the nature of the thing can be got, is the entry at the Navy office.

Mr. Whitbread.—I have been informed within these few minutes, that there is a noble personage in your lordships' body, lord Amherst, the son of the late lord Amherst, who was executor of colonel Barré, and who did look over these papers, and then gave them to lady Townshend; probably he will be able to inform your lordships whether this warrant was among the papers he looked over.—With regard to the copy in the Navy office, we have an officer of the Navy office here who can immediately produce that copy.

Lord Chancellor.—I should think the managers had better follow the course proposed by the counsel for lord Melville, namely, to trace the course of the warrant; it is proved by a witness to have been in the Navy-pay-office.

Mr. Giles.—Your lordships will observe, that the book we first offered in evidence to your lordships, contains a complete entry of the warrant; and that entry was necessarily made before the warrant was delivered out to the treasurer, which I submit is to the full as satisfactory evidence as the copy of the warrant entered at the Navy office. If it be desired that the copy of the Navy office should also be produced, the managers have no objection to send for that; but we propose to read the copy entered at the Treasury.

Lord Chancellor.—Do the counsel for lord Melville object to that?

Mr. Plumer.—I object to that.

Lord Chancellor.—What difference is there between that proposed to be read, and that which is entered at the Navy office?

Mr. Plumer.—They are not in a situation I conceive to read the entry in that book, because the best evidence would be that of the person proving he entered it from the original. The clerk they have called has produced a book, and how does that book prove itself? There is (from the absence of the person who made the entry) no evidence before your lordships upon oath that it is a correct entry. I therefore submit, that before they can get the length of representing that entry



as containing a true copy of the original, they ought to call the clerk who made that entry, and who will say he compared it with the original, and that it is a true copy of the original.

*Mr. Giles.*—We produce that book as a record, kept at the Treasury, of the warrants that were issued; it is the book in which the warrants must necessarily be entered before they are delivered out, and it is brought by the clerk of the Treasury before your lordships. It is proved that the course is, for the warrant to be brought by the first lord of the Treasury, in order to be entered in that book as a book of record.

*Lord Chancellor.*—Call Mr. Mitford in again.

Then *William Mitford*, esquire, was again called in, and examined as follows:

*Lord Chancellor.*—Is it the regular course in the Treasury office to make entries in that book of all warrants before they are delivered out from the Treasury? Do you know what is the regular course in the office of the Treasury?

*Mr. Mitford.*—There is no fixed rule for that; it must be stamped before it is delivered, and of course there must be time for the entry. It is generally two or three days before the party calls for it; after it is complete it is delivered to him.

*Lord Chancellor.*—When the warrant is brought to the Treasury, whose duty is it to make those entries, one of which you have proved?

*Mr. Mitford.*—The clerk in whose department it falls.

*Lord Chancellor.*—Do you know the signature of any of the lords of the Treasury to that entry?

*Mr. Mitford.*—There is no signature in this book; it is a mere entry by the clerk; it was done in the department of a gentleman of the name of Beldam, who is now dead, but it is not his writing, for I know his writing well.

*Lord Chancellor.*—Then you do not know that to be the hand-writing of any clerk in the office?

*Mr. Mitford.*—I do not.

*Mr. Plumer.*—I understand it is not the practice to enter all warrants in that book?

*Mr. Mitford.*—Not every one that the king signs, but it is the general king's Warrant Book.

*Mr. Giles.*—A more material question would have been, whether they ever enter any papers there as warrants which are not warrants?

*Mr. Mitford.*—Certainly not.

*Mr. Giles.*—If your lordships have any doubt upon this question, we do not press it.

*A Lord.*—When the warrant is brought in the ordinary course of business to the Treasury in order to be entered, what becomes of that warrant after the entry?

*Mr. Mitford.*—It is given to the party who requires it.

*Mr. Giles.*—To the party who brings it for entry?

*Mr. Mitford.*—No; not to the party who brings it for entry?

*Mr. Giles.*—Whom is the warrant delivered to after it is entered? What becomes of it?

*Mr. Mitford.*—It is delivered to the party himself, or to his agent.

*A Lord.*—Do you know in whose custody regularly this warrant ought to remain?

*Mr. Mitford.*—I should have thought it should have remained with the auditor before whom the party passes his account, but in that I understand I am deceived.

*A Lord.*—Is the original warrant ever in the custody of the party who is entitled to it, till the entry of it has been made by the clerk at the Treasury?

*Mr. Mitford.*—Certainly not.

*A Lord.*—Is the copy made at the instance of the party, or is it not the act of the persons who are interested to deliver over the warrants from his majesty to the party?

*Mr. Mitford.*—It is done in the course of office.

*Lord Chancellor.*—When a warrant is brought to the Treasury, is it the course of office for it to pass out of the Treasury again till that entry is made?

*Mr. Mitford.*—Certainly not.

*A Lord.*—Whether the form of the warrant be to authorise the treasurer of the navy to receive the sums of money comprehended in the warrant, or whether it be a direction to any officer to pay it?

*Mr. Mitford.*—It is not an authority for payment, but for the auditor of imprest to allow that sum in the accounts of the parties.

*Lord Chancellor.*—Do you know whether any money was paid upon this warrant?

*Mr. Giles.*—I believe the managers will be able to prove that fact. Your lordships take it that the warrant is not stated by the last witness to be deposited at the Auditor's office until the treasurer goes to pass his account; till that time it remains in the custody of the treasurer of the navy, as I understand him.

*Mr. Mitford.*—I cannot presume to say in whose custody it is.

*A Lord.*—Whether the warrant must of necessity be entered at the Auditor's office, or left there for entry?

*Mr. Mitford.*—I believe, I before observed, that I was impressed with the idea, that it ought to be left at the Auditor's office.

[The witness was directed to withdraw.]

*Mr. Giles.*—With your lordships permission, we will ask that question of Mr. Cobbe, who must be more familiar with the practice of that office, as he belongs to it.

Then *Bernard Cobbe*, esquire, was again called in, and examined as follows:

*Mr. Giles.*—Is it necessary, when the treasurer of the navy comes to pass his account, that he should leave the warrant in the office?



Mr. Cobbe.—The entry of the warrant has always been considered as sufficient.

Mr. Giles.—In the general course, what becomes of the original warrant of which the entry is made?

Mr. Cobbe.—The party leaves the warrant to be entered, and calls and takes it away again; it does not remain with the office.

Mr. Giles.—If your lordships entertain any doubt of this, the Commons have no objection to produce to your lordships the entry that is made at the Navy office, if it will be more satisfactory to the counsel for the defendant; at the same time protesting that they are now entitled to read the entry in the book of the Treasury.

Lord Chancellor.—Where are the payments upon such a warrant as this made?

Mr. Cobbe.—At the office of the treasurer of the navy.

A Lord.—Is it not your duty to make the entry in the books from the original warrant?

Mr. Cobbe.—It is the duty of the entering clerk, the clerk of enrollments for enrolling warrants, patents, and powers of attorney.

[The witness was directed to withdraw.]

Then Harry Harmood, esquire, was called in, and being sworn, was examined as follows:

Mr. Giles.—Were you paymaster to Mr. Barré when he was treasurer of the navy?

Mr. Harmood.—I was.

Mr. Giles.—Do you recollect Mr. Barré having any increase of salary during that time?

Mr. Harmood.—I do.

Mr. Giles.—Was that increase of salary paid from time to time to Mr. Barré?

Mr. Harmood.—It was, during the time I was his paymaster.

Mr. Giles.—Do you know under what authority that additional salary was paid?

Mr. Harmood.—It was by a sign manual, I apprehend; I cannot speak positively.

Lord Chancellor.—Do the counsel for the defendant admit that the original warrant cannot be found notwithstanding the search?

Mr. Plumer.—We are ready to admit that the original warrant is not to be found among the papers of the late colonel Barré. I am willing to admit (and we may take that as the datum to proceed upon) that they have satisfactorily negatived by proof the existence of the warrant among those papers. That is all that I at present admit.

A Lord.—What was the amount of the increase of salary which you paid to colonel Barré as treasurer of the navy?

Mr. Harmood.—I believe it was 2,000*l.* additional per annum, making in the whole 4,000*l.*

A Lord.—From what office, and in what manner, was that additional salary paid?

Mr. Harmood.—It was paid from the office of the treasurer of the navy.

A Lord.—By whom?

Mr. Harmood.—I do not exactly recollect by whom, whether it was in the cashier's branch or the navy branch, but it was paid at the office.

A Lord.—Under whose authority was that additional salary paid?

Mr. Harmood.—As I conceive, it was paid under a sign manual, or some warrant. There was an authority for paying it undoubtedly.

Lord Chancellor.—Is it the course of the office to return the warrants after they have made the entry?

Mr. Harmood.—I believe not, but I do not know.

[The witness was directed to withdraw.]

Lord Chancellor.—Call in Mr. Mitford.

Then William Mitford, esq. was again called in, and examined as follows:

Lord Chancellor.—We wish distinctly to understand whether, as far as you are acquainted with the course of the office, the warrant, when entered, is delivered back again to the party who brings it for entry.

Mr. Mitford.—It is never in possession of the party till after it is entered. Before it is entered in any other office, it is entered in the treasury book, and then given to the party or his agent.

[The witness was directed to withdraw.]

Lord Chancellor.—Do lord Melville's counsel admit that due diligence has been used in searching the papers of Mr. Barré, and that this warrant has not been found?

Mr. Plumer.—I am willing to take that as an admitted fact.

Lord Chancellor.—But still you object to the entry in the Treasury book being read?

Mr. Plumer.—I feel it to be my duty to do so; and I am not at present satisfied as to that preliminary question, what finally becomes of the warrant after it is entered in the different offices. I wish, if your lordships please, to ask Mr. Harmood whether he can inform your lordships whether that warrant, after having been entered in the different offices, is in the custody of the individual who is to be benefited by it.

Then Harry Harmood, esq. was again called in, and examined as follows:

Lord Chancellor.—Do you know what becomes of the original warrant after it has received the proper and regular entry at all the different offices?

Mr. Harmood.—I really do not.

A Lord.—These payments of the 2,000*l.* a year additional salary, you state to have been made; do you consider these payments to have been made in consequence of some warrant and a voucher?

Mr. Harmood.—There must have been a voucher.

A Lord.—Do you mean the warrant itself, or the entry of the warrant?



Mr. Harwood.—The warrant itself.

A Lord.—Did you see it?

Mr. Harwood.—I do not recollect that I did.

A Lord.—Is it usual at the Navy office to preserve and file all the warrants under which payments are made at that office?

Mr. Harwood.—I really cannot answer that question.

A Lord.—In the course of business at the Navy-pay office, do they not regularly file the vouchers under which the payments are made?

Mr. Harwood.—I really cannot answer that question.

A Lord.—Are you acquainted with the mode of passing the accounts of the treasurer of the navy?

Mr. Harwood.—Perhaps not through every stage of it; it is twenty-four years since I was in that office, and then I was there but four months.

A Lord.—Are they examined first by the Navy board?

Mr. Harwood.—They go through some particular branch of the Navy-office, I believe.

A Lord.—And afterwards to the Auditor's office?

Mr. Harwood.—Yes, it there finishes.

A Lord.—Is not the warrant for the salary to the treasurer of the navy an authority to him to pay that sum of money?

Mr. Harwood.—I believe it is.

A Lord.—If so, is it not a voucher necessary for the passing his accounts?

Mr. Harwood.—I should think it is.

A Lord.—Under what vouchers or by what warrant did you receive your own salary?

Mr. Harwood.—By the appointment of the treasurer himself, under his appointment.

Mr. Whitbread.—Perhaps we shall be able to save the time of your lordships by putting in an original warrant of the same nature, which was granted to lord Melville, which I hold in my hand, and which would explain the nature of the warrant granted to Mr. Barré.

Lord Chancellor.—Mr. Plumer, have you any other observation to make against the admissibility of this book?

Mr. Plumer.—Before I do that, may I be permitted, with all deference, to propose a question to this witness? Whether he ever saw this warrant in colonel Barré's possession?

Mr. Harwood.—I do not think I ever did.

Mr. Plumer.—Was it ever carried by you to any office in order to receive payment under it?

Mr. Harwood.—I think not.

Mr. Plumer.—If it had been in colonel Barré's possession, do you think you should have seen it?

Mr. Harwood.—I think it is most likely I should. I do not remember seeing the warrant.

[The witness was directed to withdraw.]

Lord Chancellor.—If the counsel have any thing further to address to the Court, as to the admissibility of this book, as evidence, the Court are ready to hear them.

Mr. Plumer.—My lords, in the first place, I submit that the managers have not yet given a clear and satisfactory account tracing where the original is: the result of the evidence given to your lordships is, that as it is not to be found among any of the papers of Mr. Barré, it never appears to have been, as far as we can learn, in his possession; because if it had been, the witness before your lordships would have seen it, managing, as he did, the concerns of Mr. Barré, and receiving money under it; and he takes upon him to say, he never did see it; and believes if it had been in Mr. Barré's possession, he should have seen it. Whatever inference arises in ordinary cases, that it would be in the custody of the individual, is negatived in the present case; and the probability is, that this warrant (whatever became of it) never reached the party who was to be benefited under it; and consequently searching for it among his papers goes no way at all towards tracing what is become of the original.

Then the next trace of this warrant is, that it has been carried to certain offices, for the purpose at least of being entered. The only offices in which they have hitherto proved any search to have been made respecting it, are the Treasury and the Auditor's office; but there is no proof whatever of any search made at any other office; and the warrant may be at this moment lying at some other office, in which, according to the regular and ordinary course of business, it should be entered. In the next place, supposing the original warrant not to be found at any one of the offices where it is entered, the next place of its deposit would be (or might be), in the office where payments are made under it. Of a search there, no evidence is given; but supposing they had gone the length of proving that in no one public office, after due search made, is the original warrant to be found, still I submit that they have not gone the length of entitling themselves to read the secondary evidence, because the secondary evidence produced is an entry made in the Treasury book; which entry itself is not authenticated, unless it be authenticated by its being in that book.

The honourable manager has stated that he has collected, that that book is in the nature of a record. Strictly and correctly, the learned and honourable manager could not state it to be in the nature of a record; that is to say, a public document, of such a nature, that whatever entries are in it, are therefore received without any evidence at all, as proper and correct evidence proving themselves. In this case, I contend with great submission, that the Court are to be informed, not merely that



a warrant did in point of fact exist, under which payments were made, but also what were the terms of that warrant; because a great deal of argument is built upon the exact phrase—upon the terms of the warrant—upon every word contained in it. It is stated to contain an implied condition, in its creating an obligation, negating the right of the individual receiving that augmented pay to all the articles enumerated in the warrant.—The bare existence therefore, of an augmentation of salary by a warrant, does not at all authenticate the precise contents of the warrant in question. How are its contents to be proved by this entry, upon the ground of its being an authentic copy of the original?—How is the copy of the original to be proved?—By the man who made the copy and compared it with the original. Now of that you have no evidence whatever.

But it may be said, being an official book, that of itself supplies the evidence of its being an authentic copy. If that can be supplied, it must be only where there is a legal officer appointed by the law, for the purpose of making an authentic copy of the original. If the usual evidence to prove its authenticity can be in any case dispensed with, it must be where the law gives credence to the officer whose duty it is to make an entry of that description. But, in the present case, that is totally negated; because Mr. Mitford has told us in the first place, that this purports to be made by an individual, whose duty it was; but he has negated its being the hand-writing of that individual; and therefore this is an instrument upon which there is a considerable doubt thrown by the evidence given, respecting the hand-writing not being the hand-writing of the person whose duty it was to make an entry upon the subject. Your lordships therefore, have not the satisfaction of supplying the defect by any positive evidence of a witness who has compared the copy with the original, because it is negated to be the copy of the entry made by the officer whose duty it was to make it.—Your lordships therefore, if you receive this entry, are to receive an entry made by some unknown person—not the person authorised to make it—he is not produced—it is not proved to be a correct copy, and I submit that upon every principle this is not evidence.

Mr. Adam.—My lords, your lordships may be assured, that, in whatever I am about to offer to your consideration, I shall not repeat unnecessarily any part of what has been enforced so fully by my learned friend; but it occurs to me, referring to those arguments which he has stated, that there are certain other arguments which ought to decide your lordships upon this occasion, not to permit the entry of any Treasury book to be read. Before I state what appear to me to be those arguments, I wish to call the attention of your lordships House, most particularly, to the nature of the allegation proposed to be proved;

and your lordships will find it is the allegation of facts contained in the preamble, relative to the situation in which colonel Barré stood with respect to this office; and therefore, if it is to have any effect at all, it probably is with a view to affect the conduct of one individual, now before your lordships, by the conduct of another. My lords, I take it that will make your lordships particularly cautious, even if the general rules of evidence did not do so, not to permit this to be read, unless it is clearly proved to be evidence fit to be admitted.

My lords, I content myself with the argument of my learned friend, with regard to the managers not having laid sufficient ground on the part of this impeachment, to entitle them to have secondary evidence received; but I contend that, if they have done so, this secondary evidence is not admissible; not only upon the grounds already stated to your lordships, but upon this ground. In consequence of questions that have been put by one of your lordships to one of the witnesses, Mr. Mitford; it appears, upon your lordships evidence, that the book in question is a copy, made from the warrant, upon the delivery of the first lord of the Treasury, after the signature of his majesty, and before it reaches the individual for whom it was meant. Then, my lords, this warrant, so copied in the Treasury book, is copied without any cognizance, or without any privity on the part of the individual—he is at that period of time totally unacquainted with it and no party to it, and, for any thing that is before your lordships in evidence, it may never have gone into his hands. Then to admit the Treasury book to be read before your lordships, is to admit the accounts of other parties, behind the back of the individual, as evidence. Now, how does it stand in the books? and how is it proved? It is proved by Mr. Mitford, that Mr. Beldam was the clerk, by whose authority warrants of this description ought to have been entered; and it is proved by Mr. Mitford, that the entry is not in his hand-writing. Then the proper officer of the Treasury has not made that entry. In addition to that, it is no way established, that Mr. Beldam, or any other clerk of the Treasury, is an officer known to the law, which would make his act, even if there were evidence of it, admissible. Upon the grounds stated by my friend, therefore, and upon the grounds I have now taken the liberty of stating, I do trust that your lordships will be of opinion, that, in a question of this sort, where the allegation to be proved is an allegation that respects a third party, not the individual whose case is under your lordships consideration, your lordships will consider, that neither in the present nor in any other stage of this case, can they make this book from the Treasury, evidence.

Lord Chancellor.—I think, at present, that this book, for the purpose for which it has been stated, is admissible evidence; *non constat* what it proves when it is received.



*A Lord.*—My lords, I feel so much doubt about it, that I could wish the managers should state the grounds upon which they conceive this to be evidence.

*A Lord.*—Before the Lords adjourn to the chamber of parliament, I should wish it might be submitted to the honourable managers, whether they feel the allegation, respecting this warrant to Mr. Barré, to be so material an allegation (if material it be at all), that they will now insist upon the proof of it; or whether they will not consider whether it be so material as to require proof at their hands: and if it does, whether they will not give proof that may be more satisfactory than the proof at present offered appears to be.

*Mr. Giles.*—My lords, it is certainly the wish of the managers for the Commons to save your lordships the inconvenience of removing to your own House: but, my lords, in the course of this discussion, a witness has brought the book from the Navy-office, in which this warrant is entered; and I understand that the initials of the witness who will produce the book are affixed to the copy of the warrant, as having examined it himself.

My lords, we wish certainly, if we can do it without much inconvenience, to show your lordships that, in consequence of the resolution of the House of Commons, his majesty was pleased, in order to carry that into execution, to grant an additional salary to the then treasurer of the navy, in lieu of all fees, profits, and emoluments; and therefore the learned counsel who addressed you last, is mistaken in the import of the allegation, for the allegation does not take the least notice of the conduct of Mr. Barré, nor can we by any possibility contrast the conduct of Mr. Barré upon that allegation with the conduct of lord Melville; but the averment is made for the mere purpose of showing, that his majesty, after the resolution of the House of Commons, did, in furtherance of that resolution, grant an additional salary to Mr. Barré. If your lordships, after I have called the witness, and offered the evidence just stated, should have any doubt about its admissibility, the managers feel it to be of so little importance to establish the allegation made in the preamble, that they will certainly waive it, and not give your lordships the trouble of retiring upon it.

With your lordships permission, I will therefore call Mr. Standert as a witness; at the same time, I beg it may be understood, that it is not to be considered, that the warrant is deposited at the Auditor's office; but that, according to the evidence you have hitherto received, the warrant ought to be in the custody of the person in whose favour it is granted. It does happen, that in the course of the proceedings of the treasurer of the navy, in order to have his account passed at the Auditor's office, he must have his warrant entered at the Auditor's office: but after it is entered it is returned of course to him; and by this time if this delay had not occurred, I

should have satisfied your lordships that such is the case, by the best of all possible evidence, against the noble defendant, because I am about to produce a warrant granted to him under similar circumstances, and which was found in the custody of his paymaster.

Then *Osborne Standert*, esq. was called in, and being sworn, was examined as follows:—

*Mr. Giles.*—What situation do you hold in the Navy-pay office?

*Mr. Standert.*—Chief clerk of the comptroller of the treasurer's accounts.

*Mr. Giles.*—What book is that?

*Mr. Standert.*—A book in which copies of all warrants are entered.

*Mr. Giles.*—Is there any copy of a warrant granted to Mr. Barré, when treasurer of the navy, to increase his salary?

*Mr. Standert.*—There is.

*Mr. Giles.*—Who made that copy, or who has attested it?

*Mr. Standert.*—I have attested it. I do not recollect who made the copy.

*Mr. Giles.*—What does that attestation of your's import?

*Mr. Standert.*—That it was examined with the original warrant upon the 22nd of October, 1782.

[The witness was directed to withdraw.]

*Mr. Giles.*—It being admitted by the counsel for the noble defendant, that this warrant is not to be found among the papers of Mr. Barré, in whose custody I contend before your lordships it ought upon the evidence strictly to be; I now produce to your lordships an examined copy which I submit to be evidence.

*Lord Chancellor.*—Mr. Plumer, what do you say to this evidence?

*Mr. Plumer.*—If your lordships are of opinion, that they have satisfactorily accounted for the original, it does appear to me that this evidence goes a great deal further to prove it an authentic examined copy with the original, than any we had before; and therefore certainly I will not give your lordships any further trouble upon that evidence.

The following Extract was read from the book:

“GEORGE R.

“Whereas, by letters patent under the great seal of Great Britain, bearing date the 10th of April, 1782, We were graciously pleased to grant unto our right trusty and well-beloved counsellor Isaac Barré, esq., the office of Treasurer of our navy royal and ships, and receiver-general of all sums of money appointed, or from time to time to be appointed and payable for the support, maintenance, and reparation of our navy royal and ships, for emption and provisions appertaining to, and necessary for our said



navy and ships, and for wages and salaries of officers, servants, and other persons whatsoever, belonging to our said navy and ships, or for any other matter or thing whatsoever, in any manner touching or concerning our navy royal or ships; and for the exercise and occupation of the said office, and for and in satisfaction of all wages and fees of three-pence of lawful money for every pound to be received and paid by the said Isaac Barré, by virtue of his said office, We were further graciously pleased to give and grant unto him, by the said letters patent, an annuity or yearly payment of two thousand pounds: and whereas it hath been represented unto us, that the said annuity or yearly payment, after deducting all charges, taxes, and expenses thereon, will not produce to the said Isaac Barré more than the sum of one thousand eight hundred and fifty pounds in each year, or thereabouts: and whereas, for divers good causes and considerations us hereunto moving, We are graciously pleased, that the income of the treasurer of our Navy should be augmented with an additional allowance of two thousand one hundred and fifty pounds, in order to make, together with the said sum of one thousand eight hundred and fifty pounds, the said income to amount in future to the sum of four thousand pounds: our will and pleasure therefore is, and we do hereby direct, authorize, and empower him, the said I. Barré, to take and apply out of such monies as are or shall come to his hands, or to the hands of his cashiers, arisen or to arise by the sale of old naval stores, the sum of two thousand one hundred and fifty pounds, which, together with the before-mentioned sum of one thousand eight hundred and fifty pounds, will make the said sum of four thousand pounds, which we are graciously pleased to grant to him, clear of all deductions, in full satisfaction of all wages and fees, and other profits and emoluments heretofore enjoyed by former treasurers of our navy, the same to commence and be computed from the day of the letters patent appointing him to the office of treasurer of our Navy, and to continue during his continuance in the said office of treasurer of our Navy, or until we shall signify our pleasure to the contrary by warrant or writing under our royal sign manual: and we do hereby authorize and command you the auditors of the imprests, and all other our officers and ministers whom it doth or may concern, to make and give full and plenary allowance and discharge thereof, and every part thereof, from time to time, in his account as treasurer of our Navy accordingly, and that without expecting any other or further order or direction from

us in that behalf: and for your so doing this shall be your warrant.

“ Given at our court at St. James’s, this 22nd day of June 1782, in the 22nd year of our reign.

“ By his majesty’s command.

“ To the auditors of our      “ ROCKINGHAM.  
Imprests now and for      “ ALTHORPE.  
the time being.”      “ F. MONTAGUE.”

Mr. *Giles*.—The next document I propose to produce to your lordships, is a warrant under the king’s sign manual, granting an additional salary to lord Melville.—I take it that the sign manual will authorize me to read the warrant; but if your lordships think it necessary for me to give any further proof, I am prepared to do it. It was found with the patent, among the papers of Mr. Douglas, who was the paymaster to lord Melville.

Mr. *Plumer*.—I shall not give your lordships any trouble upon it.

The original warrant was read, and is as follows:

“ GEORGE R.

“ Whereas, by letters patent under our great seal of Great Britain, bearing date the 19th day of August 1782, we were graciously pleased to give and grant unto our right trusty and well-beloved counsellor Henry Dundas, the office of Treasurer of our navy royal and ships, and Receiver-general of all sums of money appointed, or from time to time to be appointed and payable for the support, maintenance, and reparation of our navy royal and ships, for emption and provisions appertaining to and necessary for our said navy and ships, and for wages, salaries of officers, servants, and other persons whatsoever, belonging to our said navy or ships, or any other matter or thing whatsoever in any manner touching or concerning our navy royal or ships, and for the exercise and occupation of the said office, and for and in satisfaction of all wages and fees of three-pence of lawful money for every pound to be received and paid by the said Henry Dundas, by virtue of his said office, we were further graciously pleased to give and grant unto him, by the said letters patent, an annuity or yearly payment of 2,000*l.*: and whereas it hath been represented unto us, that the said annuity or yearly payment, after deducting all charges, taxes, and expenses thereon, will not produce to the said Henry Dundas more than the sum of 1,850*l.* in each year, or thereabouts: and whereas, for divers good causes and considerations us hereunto moving, We are graciously pleased, that the income of the treasurer of the Navy should be augmented with an additional allowance of 2,324*l.* 6*s.* 6*d.* in order to



make, together with the said sum of 1,850*l.* the said income to amount in future to the sum of 4,000*l.* Our will and pleasure therefore is, and we do hereby direct, authorize, and empower him the said Henry Dundas, to take and apply out of such monies as are in or shall come to his hands, or to the hands of his cashier, arisen or to arise by the sale of old naval stores, the sum of two thousand three hundred and twenty-four pounds six shillings, and six-pence, which, together with the before-mentioned sum of one thousand eight hundred and fifty pounds, will make the said sum of four thousand pounds; which we are graciously pleased to grant him, clear of all deductions, in full satisfaction of all wages and fees, and other profits and emoluments heretofore enjoyed by former treasurers of our navy; the same to commence and be computed from the day of the date of the letters patent appointing him to the office of treasurer of our navy, and to continue during his continuance in the said office of treasurer of our navy, or until we shall signify our pleasure to the contrary, by warrant or writing under our royal sign manual. And we do further direct, authorize, and empower him the said Henry Dundas, in case the said additional allowance of two thousand three hundred and twenty-four pounds six shillings and sixpence, together with the said several allowances before stated, shall not produce in each year the nett sum of four thousand pounds, to charge the deficiency, if there be any, in the annual amount of monies disbursed by him for fees of divers natures. And we do also hereby authorize and command you, the auditors of the Imprests, and all others our officers or ministers whom it doth or may concern, to make and give full plenary allowance and discharge thereof, and of every part thereof, from time to time accordingly in the account, and that without expecting any other or further order or direction from us in that behalf: and for so doing this shall be your warrant.

"Given at our court at St. James's, this 23rd day of October 1782, in the 22nd year of our reign.

"By his majesty's command.

|                         |                 |
|-------------------------|-----------------|
| "To the auditors of our | "SHELBURNE.     |
| Imprests now and for    | "W. PITT.       |
| the time being."        | "T. GRENVILLE." |

Mr. *Giles*.—My lords, this is the patent; we desire it may be read.

It was read, and is as follows:

"George the third by the grace of God, king of Great Britain, France and Ireland, defender of the faith, and so

forth: to all to whom these presents shall come, greeting, Whereas by our letters patent under our great seal of Great Britain, bearing date at Westminster the tenth day of April in the twenty-second year of our reign, we did give and grant unto our right trusty and well-beloved counsellor Isaac Barré, esq. the office of Treasurer of our navy royal and ships, and Receiver-general of all sums of money appointed, or from time to time to be appointed and payable for the support, maintenance, and reparation, of our navy royal and ships, for emptions and provisions appertaining to and necessary for our said navy and ships, or for wages and salaries of officers, servants, and other persons whatsoever, belonging to our said navy or ships, or for any other matter or thing whatsoever, in any manner touching or concerning our navy royal or ships, to have, hold, enjoy, occupy, and exercise the said office unto him the said Isaac Barré as well by himself as by his sufficient deputy or deputies, for and during our pleasure, as by our said recited letters patent (amongst other things) therein contained, relation being thereunto had, may more fully and at large appear: now know ye, that we have revoked and determined, and by these presents do revoke and determine our said recited letters patent, and every clause, article, and thing, therein contained: and further know ye, that we, very much confiding in the fidelity, industry, and prudent circumspection of our trusty and well-beloved Henry Dundas, esq. our advocate for that part of our kingdom called Scotland, of our especial grace, certain knowledge, and mere motion, have given and granted, and by these presents do give and grant unto him the said Henry Dundas, the office of Treasurer of our navy royal and ships, and Receiver-general of all sums of money appointed, or from time to time to be appointed and payable for the support, maintenance, and reparation of our navy royal and ships, for emptions and provisions appertaining to and necessary for our said navy and ships, or for wages and salaries of officers, servants, and other persons whatsoever, belonging to our said navy or ships, or for any other matter or thing whatsoever in any manner touching or concerning our navy royal or ships, to have, hold, enjoy, occupy, and exercise the said office unto him the said Henry Dundas, as well by himself as by his sufficient deputy or deputies for and during our pleasure: and further of our more abundant especial grace, certain knowledge, and mere motion, we have given and granted, and by these presents do give and grant unto the said Henry Dundas all that our message or



mansion house, situate, lying, and being at Deptford in our county of Kent, and heretofore occupied and enjoyed with the said office; together with all and singular edifices, barns, stables, curtilages, gardens, orchards, and all other the appurtenances to the said messuage belonging or appertaining, or heretofore used, occupied, and enjoyed with the same, to have, hold, and occupy the said messuage or mansion house, with all the appurtenances, unto the said Henry Dundas, so long as he shall exercise the said office; together with all and singular sums of money usually allowed for the hiring of boats and skiffs: and further of our more abundant especial grace, certain knowledge, and mere motion, we have given and granted, and by these presents do give and grant unto the said Henry Dundas, for the exercise and occupation of the said office, and for and in satisfaction of all wages and fees of three-pence of lawful money for every pound to be received and paid by the said Henry Dundas by virtue of his said office, an annuity or yearly payment of two thousand pounds of good and lawful money of Great Britain, and also an annual sum or allowance of one thousand and seven hundred pounds of like lawful money of Great Britain, for the wages and salaries of the paymaster, cashier, and accountant, and other officers and clerks in any manner substituted and deputed, or to be substituted and deputed under him the said Henry Dundas in the said office, and to be distributed amongst them, as the said Henry Dundas shall see fit; to have and yearly to receive and retain the said annuity or yearly payment of two thousand pounds, and also the said annual sum or allowance of one thousand and seven hundred pounds by himself out of our treasure remaining in his hands; the first payment thereof to be computed by the day from the day of the date of these our letters patent, and to be taken and retained at and for the feast of St. Michael the Archangel next ensuing, and from thence to be taken and retained at the four most usual feasts in the year, to wit, the feasts of the birth of our Lord Christ, the Annunciation of the Blessed Virgin Mary, the Nativity of Saint John the Baptist, and Saint Michael the Archangel, by even and equal portions during our pleasure:—and further, we will, and by these presents do grant to the said Henry Dundas, that he shall and may have, possess, and enjoy the said office, and also the said messuage or mansion house, with the appurtenances and the several and respective annuities and annual sums of two thousand pounds and one thousand and seven hundred pounds, and other the premises by these presents

granted or mentioned to be granted, in as ample manner and form as the said Isaac Barré, or any other person or persons lately had or received, or ought to have had or received the said office and mansion house with the appurtenances, and the several annual sums before-mentioned, or any of them: lastly, We will, and by these presents grant to the said Henry Dundas, that these our letters patent, or the inrolment thereof, shall be in and by all things good, firm, valid, sufficient, and effectual in the law, notwithstanding the not truly or fully reciting the said former letters patent of the office, and premises aforesaid, or the date thereof, or any other omission, imperfection, defect, matter, cause, or thing, whatsoever, to the contrary thereof in anywise notwithstanding: In witness whereof we have caused these our letters to be made patent: Witness ourself at Westminster the nineteenth day of August, in the twenty-second year of our reign.

“ By writ of privy seal,

“ WILMOT.

“ Entered in the office of the right honourable lord Sondes, auditor, the 23rd of November 1782.

“ JOS. HUGHES, Dep. Aud.

“ Entered in Officio Audit. Recept. Sēcūi, xxviii die Augusti 1782.

“ NEWCASTLE.

“ Entered in the office of the comptroller of the treasurer's accounts of his majesty's navy, 13th September 1782.

“ OSB. STANDERT.

“ Entered in the office of the comptroller of the navy.

“ R. PRESTWOOD.

“ Entered at the Treasury chambers, Whitehall, 20th September 1782.

“ I. M. L.

“ Entered in the office of the right honourable John lord viscount Mount Stuart, auditor, 23 November 1782.

“ PHIL. DEARE, Dep. Aud.

“ Irr<sup>itur</sup> int. Record Dñi. Rs. Georgii Tertii infra Recept. Sēcūi ss. remanen. in Officio Clici Pellm. ibm. Secundo die Septembris Anno Rñi. dict. Dñi. Rs. Vicessimo Secundo Annoq. Dñi. 1782.

“ ED. ROBERTS Deput. Cler. Pellium.

Mr. Giles.—The managers now mean to show your lordships, that lord Melville quitted the office of treasurer of the navy on the 10th of April, 1783. For that purpose we propose producing to your lordships the patent appointing lord Bayning to that office. I do not know that it will be necessary to read that patent at length; but if the learned counsel choose to admit that lord Melville quitted the office on that day, I will put in the patent.



Mr. *Plumer*.—There is no occasion to read it. I admit that lord Melville resigned his office on the 11th of April, 1783.

Mr. *Giles*.—I have to produce now, a patent, appointing lord Melville again treasurer of the navy, on the 5th of January, 1784.

Mr. *Plumer*.—Perhaps the honourable managers will be satisfied with my admission, which is, that lord Melville was, upon the 5th of January, 1784, re-appointed to the office, upon a patent in terms similar to the former, and a warrant of a similar import with the former.

Mr. *Giles*.—I have now to refer your lordships to another report of the same commissioners, one of whose reports has been already read to your lordships.

It is the eighth report of the commissioners of public accounts. I only mean to read an extract, to show it was the foundation of an act of parliament, which passed afterwards, for regulating the office of treasurer of his majesty's navy.

Then the following extract was read from the eighth report of the commissioners appointed to examine the public accounts which had been before delivered in:

"This examination has enabled us to form an opinion upon another point of moment to the public. The legislature have, in the last session of parliament, introduced into the office of the paymaster general of the forces, a regulation which, as it seems to us, may be applied as beneficially to the office of the treasurer of the navy. The custody of the cash applicable to the navy services may be transferred from the treasurer to the Bank of England, and the account only of the receipts and payments be kept in his office. All the sums now received by him may be received by the Bank: sums from the Exchequer may be imprested to the Bank. Sums directed by the letters of the different boards to be paid to him, may be directed to be paid into the Bank: all bills assigned upon him for payment may be paid, and all extra payments may be made by his drafts upon the Bank. The payment of the seamen, the artificers, and labourers in the yards, and the persons in the hospital ships, and on the half-pay lists, must be carried on in the same manner it is now. These men cannot be paid by drafts; they must have cash; and with that cash the pay-clerks must be entrusted, as they are at present, and the treasurer must continue to be responsible for them, as for officers of his appointment and under his control; but this will be no obstruction to the regulation. The money may be all issued to the pay-clerks by the drafts of the treasurer upon the Bank, according to the requisitions

of the navy board, in like manner as many of these sums are issued at this day; and upon the death or resignation of a treasurer, the balances of his cash in the Bank, and in the hands of his pay-clerks may be struck immediately, and carried over to the account of his successor. In this situation, the treasurer neither receiving nor paying public money himself, can be neither debtor to nor creditor of the public, except as far as he may be responsible for his clerks. On passing his accounts, the bill indorsed or requisition of the navy board is both his authority and voucher for his draft. The draft indorsed is the voucher for the Bank to prove their payment. If these accounts agree (and they ought frequently to be compared together) it is highly probable that they are both right."

Lord Chancellor.—Do lord Melville's counsel desire that any other part, or the whole of this report, should be read?

Mr. *Plumer*.—My lords, I am not prepared at present to point out any passages which we desire to have read; but your lordships will permit me on a future day, if it should be necessary, to supply that evidence.

Mr. *Giles*.—It will be necessary to produce the Journals, to show that that report was presented to the House of Commons.

Then the following entry in the Journal of the Commons was read:

"*Jovis, 23<sup>o</sup> die Januarij 1785.*

"The House being informed, that Mr. Beachcroft and Mr. Drummond, two of the commissioners for examining, taking, and stating the public accounts of the kingdom, attended at the door; they were called in; and at the bar presented to the House, pursuant to the directions of an act of parliament,

"An eighth report of the Commissioners appointed to examine, take, and state the Public Accounts of the kingdom.

"And then they withdrew.

"And the title of the said report was read.

"And the said report was also read."

Mr. *Giles*.—I wish to show your lordships, from the Journals of the House of Commons, that leave was given to bring in a bill for regulating the office of Treasurer of the Navy, on the 29th of April 1785.

Then the following entries in the Journal of the Commons were read:

"*Veneris, 29<sup>o</sup> die Aprilis 1785.*

"Mr. Henry Dundas presented to the House, according to order, a bill for better regulating the office of Treasurer of his Majesty's Navy; and the same was received, and read the first time.



"Resolved, that the bill be read a second time.

"Ordered, that the said bill be printed.

"Ordered, that the said bill be read a second time upon Tuesday morning next."

"*Mercurij, 25<sup>o</sup> die Maij 1785.*

"An engrossed bill for better regulating the office of Treasurer of his Majesty's Navy, was read the third time.

"Resolved, that the bill do pass, and that the title be, "An Act for better regulating the office of Treasurer of his Majesty's Navy." That Mr. Henry Dundas do carry the bill to the Lords, and desire their concurrence."

Mr. Giles.—I desire now to read an entry in your lordships' Journal of the 25th of May 1785, to show that Mr. Dundas did bring this bill up from the Commons.

Then the following entry in the original Journal of the Lords was read :

"*Die Mercurij, 25<sup>o</sup> Maij 1785.*

"A message was brought from the House of Commons, by Mr. Dundas and others, with a bill, intituled, "An Act for better regulating the office of the Treasurer of his Majesty's Navy;" to which they desire the concurrence of this House."

Mr. Giles.—I believe it is unnecessary to trouble your lordships with reading any entry in your lordships' Journal to prove that the act passed—the act proves itself.

My lords, we have now arrived at the period in which it will be necessary to show your lordships the appointment of Mr. Douglas as paymaster to lord Melville. The first evidence that I offer to your lordships to prove the appointment of Mr. Douglas by lord Melville as his paymaster, is, a letter of lord Melville's to the navy board, in which he states that he has so appointed him. If it be necessary we will prove the hand-writing of lord Melville to that letter.

Mr. Plumer.—We admit it to be lord Melville's hand writing.

Then the following letter was read :

"Treasury Office, Broad-street,  
26th Aug. 1782.

"Gentlemen,

"The king having been pleased to appoint me Treasurer of his Majesty's Navy, by his letters patent, bearing date the 19th instant, I do hereby acquaint you, that I have made Andrew Douglas, esq. my paymaster, whom I have directed to attend the Treasury and Exchequer, and I desire his salary may be made out accordingly, to commence from the date of my patent.

"All the rest of the officers, clerks, &c. belonging to this office, I have con-

tinued in the same stations they were in under the late treasurer.

"I am, gentlemen,

"Your most humble servant,

"Navy-board.

"HENRY DUNDAS."

Mr. Giles.—I wish now to have read to your lordships an entry made at the Exchequer, of the power of attorney under which Mr. Douglas acted for lord Melville. It will be necessary first to prove, that search has been made for the original, and that it cannot be found; for that purpose I will call the son and executor of Mr. Douglas, and also Mrs. Douglas, his widow.

Then Archibald Douglas, esq. was called in, and being sworn, was examined as follows :

Mr. Giles.—Are you the son and executor of the late Mr. Andrew Douglas, who was paymaster to lord Melville?

Mr. Douglas.—I am both.

Mr. Giles.—Have you any papers belonging to your late father?

Mr. Douglas.—I have none.

Mr. Giles.—Do you know what became of the papers which your father left upon his death?

Mr. Douglas.—Those papers were all left in my father's house, who then lived in Gerard-street, London.

Mr. Giles.—Who obtained possession of those papers?

Mr. Douglas.—I cannot say farther than that they were left in his house; they were not in my possession.

Mr. Giles.—Did Mrs. Douglas, your mother, reside with him at the time of his death?

Mr. Douglas.—She did.

Mr. Giles.—Did she continue in the house at the time the papers were left in the house?

Mr. Douglas.—She continued for some time in that house, till she removed to another.

Mr. Giles.—Did you see any of the papers belonging to your father, in that house, afterwards?

Mr. Douglas.—No.

Mr. Giles.—How did you understand they were there?

Mr. Douglas.—I have always understood they were there.

Then Archibald Douglas, esquire, was cross-examined as follows :

Mr. Plumer.—Were any of the papers of the late Mr. Douglas, to your knowledge, ever delivered to lord Melville?

Mr. Douglas.—None that I know of.

Mr. Giles.—There may be questions which we shall have to put to this witness in a future stage of this proceeding; but it would be only perplexing it, to introduce them now.



[The witness was directed to withdraw.]

Then Mrs. *Mary Douglas* was called in, and being sworn, was examined as follows :

Mr. *Giles*.—Did the papers belonging to your late husband come into your possession upon his death?

Mrs. *Douglas*.—Yes.

Mr. *Giles*.—Have you any papers belonging to Mr. *Douglas*, your late husband, except those which you delivered over to two gentlemen of the committee, who were appointed to prepare articles of impeachment against lord Melville?

Mrs. *Douglas*.—None.

Mr. *Giles*.—Did you deliver over any papers to two gentlemen of the committee appointed to draw up the articles of impeachment against lord Melville?

Mrs. *Douglas*.—Yes, a box of papers.

Mr. *Giles*.—Did that box contain all the papers belonging to your late husband?

Mrs. *Douglas*.—Yes, all of them.

Then Mrs. *Mary Douglas* was cross-examined as follows :

Mr. *Adam*.—When did you deliver over these papers to the two members of the committee who went to your house for that purpose?

Mrs. *Douglas*.—I cannot recollect the day of the month, not thinking to be called on.

Mr. *Adam*.—In what year was it?

Mrs. *Douglas*.—It was in 1805.

Mr. *Giles*.—The day can be settled immediately, if the learned counsel are anxious to have that ascertained.

Mr. *Adam*.—In what part of your house were the papers kept at the time they were delivered?

Mrs. *Douglas*.—In the attic story.

Mr. *Adam*.—In a bed-room?

Mrs. *Douglas*.—In a waste room.

Mr. *Adam*.—Where is your house?

Mrs. *Douglas*.—In Margaret-street, Cavendish-square.

Mr. *Adam*.—Did you deliver the papers yourself to them?

Mrs. *Douglas*.—I did not go up stairs with them; but one of my servants did, and saw them take the box of papers.

Mr. *Adam*.—Was the box of papers shown to you, before they left the house with it?

Mrs. *Douglas*.—I saw the box, and knew it was mine; it was directed, on a piece of parchment, The Treasurer's and Paymaster's Accounts.

Mr. *Adam*.—Did they take the box away with them?

Mrs. *Douglas*.—Yes, they did.

Mr. *Adam*.—Had the box ever been out of your custody from the time of your husband's death till they came and took it away?

Mrs. *Douglas*.—It had always been in my custody; it was never out of my possession.

Mr. *Adam*.—Do you know the gentlemen to whom you delivered it?

Mrs. *Douglas*.—Certainly I should know them.

Mr. *Adam*.—Did you know them before you delivered the box to them?

Mrs. *Douglas*.—No.

Mr. *Adam*.—What was the reason of your delivering the box to them, if you did not know them before?

Mrs. *Douglas*.—I was sent for by the gentlemen who had the box, to the committee, and I was too ill to attend them.

Mr. *Adam*.—You were served with an order from the committee, requiring your attendance?

Mrs. *Douglas*.—Yes.

Mr. *Adam*.—And that was the reason of your delivering them?

Mrs. *Douglas*.—Yes, it was.

Mr. *Adam*.—Did the gentlemen who came for the box represent themselves as members of the committee?

Mrs. *Douglas*.—Yes.

Mr. *Adam*.—Did they state that they had a right to the papers?

Mrs. *Douglas*.—They did.

Mr. *Adam*.—Did you examine the contents of the box, before the gentlemen took it away from your house.

Mrs. *Douglas*.—No never; the box had been closed for twenty years.

Mr. *Adam*.—Was it a locked box?

Mrs. *Douglas*.—Yes.

Mr. *Adam*.—Did you keep the key of the box?

Mrs. *Douglas*.—I kept it locked up.

Mr. *Adam*.—Did you deliver the key of the box to the two gentlemen who attended?

Mrs. *Douglas*.—I did.

[The witness was directed to withdraw.]

Then John Winter, jun. esq. was called in, and being sworn, was examined as follows :

Mr. *Giles*.—Did you examine the contents of the box delivered by Mrs. *Douglas* to two members of the committee?

Mr. *Plumer*.—I beg to ask, as a preliminary question, whether this gentleman was at Mrs. *Douglas*'s when the box was delivered?

Mr. *Giles*.—He was not.

Mr. *Plumer*.—I wish to know, whether this witness saw this box delivered by Mrs. *Douglas* to two members of the committee?

Mr. *Winter*.—I saw it after it was in Mr. *Whitbread*'s possession.

[The witness was directed to withdraw.]

Mr. *Whitbread*.—Perhaps it may save time, if I inform your lordships, that I was the person who received the box from Mrs. *Douglas*; it was locked, and she delivered to me the key; and it was in my possession locked, until Mr. *Winter* opened it.

Lord Chancellor.—The honourable manager must be sworn to those facts.

Mr. *Whitbread*.—Certainly.

Then Samuel Whitbread, esq. was sworn.

Mr. *Whitbread*.—My lords, in the course of the proceedings of the committee appointed



to draw up articles of impeachment against lord Melville, an order was sent to Mrs. Douglas, the executrix of Mr. Andrew Douglas, the paymaster of lord Melville, to attend that committee. The committee were informed she was in possession of the papers of her late husband, and the order was, I believe, that she should bring those papers to the committee; the answer returned by Mrs. Douglas was, that she was too ill to attend; the message came by the messenger of the House of Commons, who was ordered to attend with that summons; upon which, as time pressed, for that was the day of the prorogation of parliament, and within a very few hours of parliament being prorogued, the committee thought proper to send two of their members, one of whom I was, in order to see whether she was in possession of those papers. Attended by Mr. Creevey, another member of that committee, I went to Mrs. Douglas's house, and inquired for the papers of her late husband, she informed us, that all the public papers of her late husband were contained in a deal box in the attic story. To the room in which that box was deposited we resorted, and there we found a deal box locked up, of which Mrs. Douglas had the key; that key she put into my possession; the other member of the committee and myself took the box, and we returned with it to the House of Commons, and put it into the room where the committee assembled, and arrived at the House of Commons before the prorogation took place; I kept possession of the key; and on the next day, the box was removed to my house, the key being still in my possession, and no paper having been taken out of that box. On the next day, or the day after, Mr. John Winter, now before your lordships, came to me by my desire, and I gave him the key of the box, in order that he might assort and arrange the papers that were there.

Mr. Plumer.—I beg the honourable gentleman, if he can, to state the day.

Mr. Whitbread.—I do not recollect the day immediately, but I know it was the day on which parliament was prorogued,—which I am informed was the 12th of July.

Mr. Plumer.—Have these books and papers been ever since in the possession of the managers for the House of Commons?

Mr. Whitbread.—Either in possession of the committee, of myself, as one of the committee, or of Mr. John Winter; but never certainly out of the custody of the committee, or their solicitor.

Mr. Plumer.—May I be permitted to ask whether that was the course pursued whenever the committee found it necessary to examine any books or papers? to send for them, and to possess themselves of those books or papers?

Mr. Whitbread.—Whenever the committee had occasion to resort to any books or papers, they regularly served the person in possession of those books or papers, with an order, that

they might be brought to them: this was the only instance in which papers, in a private person's possession, were obtained; and such things would not have been resorted to, had it not been for the illness of Mrs. Douglas; but had any other instances of the like kind occurred, the committee would have thought it their duty to attend in a body, or to send some members of their body to get possession of those papers.

Mr. Plumer.—Have the committee any private papers of Mr. Newbigging; and, if they have, did they get possession of them in the same way?

Mr. Whitbread.—Mr. Newbigging was sent for to attend the impeachment committee as a witness from Edinburgh, and he brought his papers, a part of which (such as they thought proper to keep) are in possession of the committee.

Then John Winter, jun. esq. was again called in, and examined as follows:

Mr. Giles.—Did you carefully examine the papers contained in the deal box of which the last witness has spoken?

Mr. Winter.—Yes; in consequence of directions I received from Mr. Whitbread, I examined and selected various papers that were found in the possession of Mrs. Douglas.

Mr. Giles.—Could you find amongst those papers a power of attorney from lord Melville, to Mr. Douglas?

Mr. Winter.—I did not.

Mr. Giles.—Did you make search for such power of attorney?

Mr. Winter.—Certainly; I was anxious to find every paper relating to the treasurership of lord Melville.

Mr. Giles.—I now propose to produce to your lordships an entry made of that power of attorney at the Exchequer.

Then John Winter, jun. esq. was cross-examined as follows:

Mr. Adam.—Do you recollect any applications having been made to you, or any made to Mr. Whitbread, by the solicitor for lord Melville, for an inspection of that box of papers?

Mr. Winter.—Yes, there was an application made by Messieurs Shawe and Le Blanc, addressed to the committee for an inspection of the papers in this box.

Mr. Adam.—When was that made?

Mr. Winter.—Early in the commencement of the present session.

Mr. Adam.—At what time was the inspection granted?

Mr. Winter.—I cannot state exactly how long, but it was a few days after the application was made.

Mr. Giles.—I believe this application and the answer were both in writing?

Lord Chancellor.—Were the application and the answer both in writing?

Mr. Winter.—They were both in writing.



Mr. *Whitbread*.—I am the person to whom the letter was addressed, as chairman of the committee; if the learned counsel will state what they mean that the conduct of the committee was, I am sure if they do state it fairly, the committee will immediately allow that such was their conduct.

Mr. *Adam*.—I must get at the facts of this case by asking questions in the common and usual way. I have no objection to put the question to Mr. *Whitbread*, instead of the other witness. I wish to know how soon after the original request was made for the inspection of the box, that request was granted?

Mr. *Whitbread*.—The letter was addressed to me, as chairman of the committee, by lord Melville's solicitor, signed Shawe and Le Blanc; these letters are in existence and may be produced; they will ascertain the precise dates; they are not here, because no notice was served for the production of them. The substance is shortly this; on the day after I believe, probably the same day, but I am sure there was as short an interval as could be, till we could take the sense of the committee upon it (the application was for leave to examine the papers found in Mrs. Douglas's possession). I immediately informed the solicitor, that as soon as an examination had been gone through on the part of the committee, that then those papers might be examined by the solicitor for the defendant under the inspection of the solicitor on the part of the committee, or the committee clerk.

Mr. *Plumer*.—When, in point of fact, was the inspection had?

Mr. *Whitbread*.—I do not know; it was had under the inspection of Messieurs Winter and Kaye, of which they can give information, but I have every reason to believe it was as soon as possible after the application; a very considerable time ago.

Mr. *Plumer*.—Was not the access of the solicitor of lord Melville forbidden, until the committee should have made their last report?

Mr. *Winter*.—I do not recollect any direction of that sort.

Mr. *Plumer*.—In point of fact, how soon were they examined by Messieurs Shawe and Le Blanc?

Mr. *Winter*.—A very short time after we had Mr. *Whitbread*'s directions to let lord Melville's solicitor inspect them.

Mr. *Plumer*.—When was it you had Mr. *Whitbread*'s directions?

Mr. *Winter*.—About six weeks ago, or more.

Mr. *Plumer*.—At what time were they first put into your possession?

Mr. *Winter*.—In July last.

Mr. *Plumer*.—Did you show Mr. Le Blanc all the papers contained in that box?

Mr. *Winter*.—I showed Mr. Le Blanc all the papers relating to the treasurership of lord Melville.

Mr. *Whitbread*.—It may be proper here to

state, that all the papers were shown for which the application was made; and your lordships will recollect, that the day on which the possession of these papers was obtained, was the day of the prorogation of parliament; and that the committee could not act or take any inspection of those papers till parliament was again assembled, and the committee were re-assembled.

Mr. *Adam*.—I must state again, that I wish to get at the facts in the usual course.—You say, that all the papers relating to lord Melville's treasurership were shown to Mr. Le Blanc?

Mr. *Winter*.—Yes.

Mr. *Plumer*.—Were there other papers then in the box, besides those which related to lord Melville's treasurership?

Mr. *Winter*.—There were.

Mr. *Plumer*.—What became of these papers?

Mr. *Winter*.—They are still in my possession.

Mr. *Plumer*.—Have they been removed from the box?

Mr. *Winter*.—No.

Mr. *Plumer*.—Were they removed from the box at the time Mr. Le Blanc examined the papers?

Mr. *Winter*.—They were.

Mr. *Plumer*.—Where were they placed?

Mr. *Winter*.—They were placed in a room at our office, for the convenience of Mr. Le Blanc's inspection.

Mr. *Plumer*.—I mean to ask where the papers that were taken out of the box, during the period of Mr. Le Blanc's inspection, were taken?

Mr. *Winter*.—The other papers remained in the box.

Mr. *Plumer*.—The papers Mr. Le Blanc inspected were taken from the box by you, and put into a room for Mr. Le Blanc's inspection?

Mr. *Winter*.—They were.

Mr. *Plumer*.—And the other papers remained in the box?

Mr. *Winter*.—They did so.

Mr. *Plumer*.—Was that room locked up?

Mr. *Winter*.—It was not.

Mr. *Plumer*.—Did you inform Mr. Le Blanc that there were other papers in the box which came from Mrs. Douglas, besides those which were placed in the room for his inspection?

Mr. *Winter*.—I did.

Mr. *Plumer*.—Did you produce to Mr. Le Blanc all the papers relating to the accounts between lord Melville and Mr. Douglas?

Mr. *Winter*.—I did.

Lord Chancellor.—Are you certain that the papers you took into the other room, and arranged for the inspection of Mr. Le Blanc, were all papers relating to the treasurership of lord Melville?

Mr. *Winter*.—Certainly.

A Lord.—Were the other papers that remained in the box, papers relating to other treasurers accounts?



Mr. Winter.—They were; to the treasurer-ship of Mr. Welbore Ellis and sir Gilbert Elliot.

A Lord.—Was any notice given to Mr. or Mrs. Douglas before the opening of that box?

Mr. Winter.—Not to my knowledge.

A Lord.—You have proved that you placed the papers open for the inspection of Mr. Le Blanc. Did the box from which you took the papers continue to be locked during the whole time it was in your possession?

Mr. Winter.—Yes.

[The witness was directed to withdraw.]

Then William Rose Haworth, esq. was called in, and being sworn, was examined as follows:

Mr. Giles.—What situation do you hold at the Exchequer?

Mr. Haworth.—Clerk of the debentures.

Mr. Giles.—Have you any book in your custody brought from the Exchequer, in which is contained an entry of a power of attorney from lord Melville to Mr. Douglas?

Mr. Haworth.—I have.

Mr. Giles.—What book is it?

Mr. Haworth.—A book we call the Letter of Attorney Book.

Mr. Giles.—What does that book contain?

Mr. Haworth.—Letters of attorney, entered from 1779 to 1784.

Mr. Giles.—What letters of attorney?

Mr. Haworth.—It contains generally, all the letters of attorney at the Exchequer.

Mr. Giles.—Do you mean all letters of attorney under which money is received at the Exchequer?

Mr. Haworth.—Certainly.

Mr. Giles.—Is there an entry of a letter of attorney from lord Melville to Mr. Douglas?

Mr. Haworth.—There is one in this book, in the year 1782, entered at the Exchequer, on the 30th of August, 1782.

Mr. Giles.—Whose writing is that entry?

Mr. Haworth.—It is mine.

Mr. Giles.—From what did you write that?

Mr. Haworth.—From the original power of attorney.

Lord Chancellor.—How do you know it was the original power of attorney?

Mr. Haworth.—From its being brought to me, as all other powers of attorney are, for entering.

Lord Chancellor.—Who brought it to you?

Mr. Haworth.—I cannot say; most probably Mr. Douglas.

Mr. Giles.—Did Mr. Douglas receive money under that power of attorney?

Mr. Haworth.—He did.

Mr. Giles.—I propose reading the power of attorney from this entry in the Exchequer book.

Lord Chancellor.—At what time did Mr. Douglas receive money under that power of attorney, or was it more than once?

Mr. Haworth.—From the date of it to the time of his death, I believe,

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Lord Chancellor.—Was any objection ever made to his receiving any money under that power of attorney?

Mr. Haworth.—None that ever I heard of.

Mr. Giles.—Did he receive any money on account of the treasurer-ship of lord Melville, except under that power of attorney?

Mr. Haworth.—None that I know of.

Then William Rose Haworth, esq. was cross-examined as follows:

Mr. Plumer.—Is the payment of money in your office?

Mr. Haworth.—The payment of money is not in the office I belong to, but the direction of the money for payment.

Mr. Plumer.—Did you ever pay any money, or see any money paid to Mr. Douglas?

Mr. Haworth.—No, I never paid any money to Mr. Douglas; but I have seen a direction to pay the money to Mr. Dundas or Mr. Douglas.

Mr. Plumer.—That direction is in writing?

Mr. Haworth.—The auditor directs the money, and the teller pays it.

Mr. Plumer.—Do you of your own knowledge know of any sum of money whatever having been paid to Mr. Douglas?

Mr. Haworth.—I know that Mr. Douglas has had money under this power of attorney, from my writing on the order for Mr. Douglas to receive the money.

Mr. Plumer.—How do you know that he did in fact receive the money?

Mr. Haworth.—I cannot speak myself to the money being paid to Mr. Douglas, because the money does not come through my hands.

Mr. Plumer.—Then all you mean to say is, that some directions for payment were given, but you do not know in point of fact that he ever received any money at all?

Mr. Haworth.—Certainly not.

Lord Chancellor.—Was there any other power of attorney executed, excepting that of which you are now speaking?

Mr. Haworth.—We have no power of attorney but that, entered in the office, from the year 1782 to the present time, of the treasurer of the navy.

A Lord.—Does the paper which you produce as a copy, purport to contain the names of the persons who were attesting witnesses to the power of attorney?

Mr. Haworth.—It does.

A Lord.—Do you know whether those persons are living or dead?

Mr. Haworth.—I do not.

Lord Chancellor.—Do you mean that up to this time there is no other power of attorney?

Mr. Haworth.—There is not.

[The witness was directed to withdraw.]

Mr. Plumer.—My lords, I am persuaded that it is not necessary to argue this question; all your lordships have anticipated what is the objection to the competency of this evidence. There is no proof before your lordships that



an original signed by lord Melville ever existed; none whatever; and that is the first step to take, before any thing like a copy of a supposed original can possibly be received in evidence. The first thing is, to prove that any original ever did exist, before we can resort to the secondary evidence. And in the next place they are attempting to supply the fact of actual payment to Mr. Douglas, even supposing it would do, which it would not; but there is no evidence to prove that Mr. Douglas ever in fact received a farthing under any authority whatever.

Mr. Giles.—When the learned counsel contend before your lordships, that there is not any evidence of an appointment by lord Melville, they seem to lay entirely out of the question that letter which I produced signed by lord Melville, stating that he had appointed Mr. Douglas as his paymaster. He could not appoint Mr. Douglas as his paymaster, and authorize him to receive money at the Exchequer, but by this power of attorney; and therefore the learned counsel are not correct when they say, there is no evidence that lord Melville executed a power of attorney to Mr. Douglas; but if your lordships think that we are not entitled to read this entry, it is impossible that you should ever receive evidence of a power of attorney but from the original. Your lordships have here a person who made a copy of it: you have here a letter, stating that lord Melville had appointed Mr. Douglas his paymaster: you have evidence that he could not receive one penny but under a power of attorney, and though the witness does not know that he did receive the money, yet he says he gave the warrant order for him to receive it; and we can add to this, if your lordships think it material, the receipts of Mr. Douglas for the money he received at the Exchequer under that power of attorney.

Lord Chancellor.—I am of opinion that you have not carried your proof far enough to entitle you to read this. The question is not, whether by some means or other this gentleman was paymaster to lord Melville, but whether he was constituted paymaster by that power of attorney. There is no legal proof that this is lord Melville's hand-writing: it has been asked whether he knows that the persons who appear to be the attesting witnesses to it are living or dead; but the witness does not seem to know whether they are living or dead, nor does it appear that any inquiry has been made as to who were the persons who could prove that fact; neither does it appear that Mr. Douglas ever received any money under that appointment; the managers therefore have not entitled themselves to read this paper.

Mr. Giles.—The managers will produce tomorrow the attesting witness to that power of attorney: he is alive, but he is not here now.

Lord Chancellor.—That will put the thing in a very different situation.

Then John Winter junior, esq. was again called in, and examined as follows:

A Lord.—Did you yourself keep the key of the box which has been the subject of inquiry? or did you ever part with that key during that time to any other person?

Mr. Winter.—The key sometimes remained in the box in my office.

A Lord.—Did it remain in the box in your office when you were absent from the office?

Mr. Winter.—I had examined all the papers before the box ever came into our office.

A Lord.—Had you examined all the papers the box contained before you ever suffered the key to be out of your custody?

Mr. Winter.—Certainly; I examined all the papers contained in the box the first day I saw the box.

A Lord.—Are you certain that no papers could have been taken out of the box during the time whilst you had the possession of the key?

Mr. Winter.—I cannot say that it would have been impossible; all I can state is, that I examined all the papers contained in the box the first day I saw it.

A Lord.—Did you make any list of them?

Mr. Winter.—No; I fairly arranged them, and put labels on each.

A Lord.—Are you able to swear, that those papers on which you put labels the first day you took possession of the box, continued to be in your possession during all the time that the box remained with you?

Mr. Winter.—Certainly.

A Lord.—At what time did you separate the papers relative to lord Melville's treasurer-ship from the other papers?

Mr. Winter.—The morning that Mr. Le Blanc attended to examine them.

A Lord.—Was Mr. Le Blanc made acquainted with what the other papers were that remained in the box, after the separation? that they belonged to the other treasurerships, and not to the treasurership of lord Melville?

Mr. Winter.—After Mr. Le Blanc had completed his examination of the papers relative to the treasurership of lord Melville, I thought it was right to tell him there were papers relative to other treasurerships that were open to his inspection, if he desired to see them.

A Lord.—What answer did he make to that?

Mr. Winter.—The last time I saw Mr. Le Blanc, I think it was, he said, he had not time to make an arrangement; but he would let me know if he thought it material to examine them.

A Lord.—Did you see Mr. Le Blanc only once?

Mr. Winter.—No; the first time I left the message with his clerk.

A Lord.—Were the papers which were taken out for the examination of Mr. Le Blanc, at other times always kept locked up in the box with the other papers?



Mr. Winter.—The papers selected for the inspection of Mr. Le Blanc were put into that room, and they continued there till after he had inspected them, and then they were returned again into the box.

A Lord.—Are you a clerk, or any other officer of the House of Commons?

Mr. Winter.—No; I have the honour to be one of the solicitors for the managers.

A Lord.—Were the papers which were not shown to Shawe and Le Blanc always kept in that box?

Mr. Winter.—They were.

[The witness was directed to withdraw.]

Mr. Giles.—I mean now to offer evidence to your lordships, to show, that upon opening an account at the Bank, lord Melville signed the Firm-book, and that Mr. Douglas, his pay-master, did the same.

Then Mr. Thomas Rippon was called in, and being sworn, was examined, as follows:

Mr. Giles.—Are you a clerk in the Bank? and what book is that you now hold in your hand?

Mr. Rippon.—I am one of the cashiers in the Bank; this is one of the Firm-books belonging to the Bank.

Mr. Giles.—Do you find in that book the signatures of lord Melville (then Mr. Dundas) and of Mr. Andrew Douglas?

Mr. Rippon.—It appears, in this book, that Henry Dundas and Andrew Douglas, signed on the 8th of August 1782.

Mr. Giles.—Are you acquainted with the hand-writing of lord Melville?

Mr. Rippon.—I am.

Lord Chancellor.—Did you ever see him write?

Mr. Rippon.—I never saw him write.

Mr. Plumer.—We will admit the hand-writing.

Mr. Giles.—Do you know the hand-writing of Mr. Douglas?

Mr. Rippon.—Yes; I never saw him write; but this corresponds with the signature to the power of attorney which was granted.

[The witness was directed to withdraw.]

Then Mr. Archibald Douglas was again called in, and examined as follows:

Mr. Giles.—Is that name, Andrew Douglas, your father's hand-writing?

Mr. Douglas.—It is.

[The witness was directed to withdraw.]

Then Mr. Thomas Rippon was again called in, and examined, as follows:

Mr. Giles.—State for what purpose lord Melville and Mr. Douglas signed that book on that day?

Mr. Rippon.—In consequence of a power of attorney, granted from Henry Dundas to Andrew Douglas. Henry Dundas signed this

book, in consequence of his opening an account with the Bank; and Andrew Douglas signed it in consequence of a power of attorney, granted from Henry Dundas to him.

Mr. Giles.—Do you know what is become of that power of attorney?

Mr. Rippon.—I do not.

Then the following entries in the said Firm-book of the Bank were read:

"Henry Dundas, 8th August, 1782.  
John Clifford.

"For account of right hon. Henry Dundas.

"Andrew Douglas, 8th August, 1782.  
John Clifford.

"For the right hon. Henry Dundas and J. Slade, 8th August, 1782.  
John Clifford.

"For the right hon. Henry Dundas and George Swaffield, 8th August, 1782.  
John Clifford.

Lord Chancellor.—When an account is opened at the Bank, do they enter their signatures in the book, that the Bank may be acquainted with their hand-writing?

Mr. Rippon.—Yes; this is the book in which such signatures are always taken for the purpose of comparing the drafts as they are drawn.

Lord Chancellor.—Is that the universal course at the Bank, in opening accounts?

Mr. Rippon.—It is an invariable rule.

[The witness was directed to withdraw.]

Mr. Giles.—My lords, I am now going to put in a book which comes from the Navy-office (not from the Navy-pay-office, but the Navy-office), containing receipts of Mr. Douglas, or accounts signed by Mr. Douglas, stating, that he has received certain sums of money at the Exchequer: these receipts are transmitted from the Navy-pay-office regularly to the Navy-office; it is a part of his duty, as pay-master, to transmit those receipts to the Navy-office; and this book comes from the Navy-office.

Then Osborne Standert, esq. was again called in, and examined as follows:

Mr. Giles.—Is it the duty of the treasurer of the navy, through his paymaster, to transmit such accounts as these to the Navy-office?

Mr. Standert.—It is the practice that every sum the treasurer receives, he sends a certificate for to the Navy-office.

Mr. Giles.—Is that the book containing the receipts during the paymastership of Andrew Douglas?

Mr. Standert.—It is.

Mr. Giles.—Are these certificates signed by Mr. Andrew Douglas, the then paymaster?

Mr. Standert.—When he is present he signs them, or in his absence another person signs them.



Mr. Giles.—Are these receipts his writing?

Mr. Standert.—They are.

Lord Chancellor.—Have you seen him write?

Mr. Standert.—I never saw him write.

[The witness was directed to withdraw.]

Then Archibald Douglas, esq. was again called in, and examined as follows:

Mr. Whitbread.—Look at the words Andrew Douglas in that book, and say whether they are the hand-writing of your late father?

Mr. Douglas.—They are.

[The witness was directed to withdraw.]

Mr. Giles.—I put in a receipt in that book, showing that Mr. Douglas did, on the 6th of November, 1782, receive the sum of 45,000*l.* from the Exchequer, as paymaster of lord Melville.

Mr. Plumer.—I understand the honourable manager to propose to prove a certain fact, viz. that 45,000*l.* was received by the late Mr. Douglas, in some character or other.

Mr. Giles.—The learned counsel much misunderstands the application of that evidence. So far from stating that Mr. Douglas received it in some character or other, it is expressly stated that he received it as paymaster of lord Melville, and gives that certificate at the Navy-office, of having received it as paymaster of lord Melville.

Mr. Plumer.—My objection goes, in whatever character he is supposed to have received it, to this receipt or certificate being taken for evidence that he did actually receive so much money. Whatever character he was invested with, if it be material to establish as a fact in this cause, that he in point of fact received so much money as has been stated, or any sum of money, that must be proved by legal evidence; and this, I submit, is not the proper evidence; for surely it will not be argued that the receipt of a person is evidence against any body but himself. But the managers mean now to affect lord Melville, by proving as a fact, that another person received so much money by that person's receipt. His receipt is evidence against himself, but not against any body else; and therefore this is not the proper evidence to prove that fact, whatever character the person was invested with. If the honourable and learned manager should make it necessary, or call in question this position, it will not be difficult to supply him with cases upon the subject.

Mr. Giles.—I do not produce this as a receipt; it is a certificate by Mr. Douglas, who was paymaster of lord Melville, to the Navy-office; a certificate he is bound to make from time to time, stating that the paymaster or treasurer of the navy has received such and such sums of money. This is the account transmitted to the Navy-office of sums received; it is not his receipt for the money.

Mr. Plumer.—This does not alter the nature of the objection. Call it certificate, receipt,

or what you please, what is it but a written declaration not upon oath to affect third persons? That is the principle upon which this cannot be received in evidence. You must prove every fact against the noble lord, by *viva voce* testimony upon oath, open to examination and cross-examination; unless in particular circumstances where there are documents under his hand, or by which he is affected, which dispense with the necessity of that evidence. That paper is a declaration made by a third person not upon oath, and consequently is evidence only against the individual signing it.

Lord Chancellor.—You must establish that this gentleman was invested with the character of paymaster by lord Melville, but it remains yet to prove the power of attorney under which he acquired that character.

Mr. Giles.—I offered this evidence with that view. Having shown to your lordships by lord Melville's letter to the Navy board, that he had appointed Mr. Douglas paymaster,—and being his paymaster, it was necessary he should receive all that money that came from the Exchequer, for the treasurer of the navy never receives any; it is a part of the duty of his office to transmit those certificates to the Exchequer;—I produce this as the best and most authentic evidence, coming as it were from lord Melville himself; for Mr. Douglas, when he acts as paymaster, represents lord Melville.

Lord Chancellor.—If you prove the payment to him, and establish by lord Melville's letter, or any other evidence, that he was invested with that character, then a receipt by him will be a receipt by lord Melville. But the question is this; whether if I appoint a person to represent me, and act as my agent, his acknowledgment of his having received a sum of money is evidence against me?

Mr. Giles.—As paymaster, it is the duty of his office to acknowledge the sums he receives; and this is the acknowledgment which he makes, and which could be made in no other possible way.

Lord Chancellor.—Have you any difficulty in proving the fact that he received that money, clothed with the character of paymaster.

Mr. Giles.—I have not any difficulty in proving that fact, but I conceive it to be of great importance to this cause, that it should now be decided by your lordships, whether this book is not evidence against lord Melville:—it being a book containing certificates, which are transmitted under lord Melville's authority by Mr. Douglas his paymaster, to the Navy-office. It is the duty of the paymaster so to transmit an account of the money he receives at the Exchequer, and he has done so in this case. Mr. Douglas, as paymaster of lord Melville, receives money at the Exchequer; and, in the execution of his duty as paymaster, he transmits accounts of the money so received to the Navy-office. By



his appointment as paymaster, he is authorized to make the certificates to the Navy-office on behalf of the treasurer, and lord Melville must be bound by his act. I do not mean to say that it would be conclusive evidence against lord Melville; but if your lordships please we will call back Mr. Standert to explain more particularly the practice of the office, and the nature of that book; added to which your lordships see it is an entry, in the hand-writing of Mr. Douglas, in which he charges himself—for he states that he has received so much money.

Then *Osborne Standert*, esq. was again called in, and examined as follows:

*Mr. Whitbread*.—What is the book you have in your hand?

*Mr. Standert*.—The treasurer's receipts for money he has received at the Exchequer.

*Mr. Whitbread*.—Is that an official book?

*Mr. Standert*.—It comes in single sheets of paper, which we keep as certificates of the payment of money to the paymaster of the Navy, for the treasurer, which are afterwards bound up.

[The witness was directed to withdraw.]

*Lord Chancellor*.—For what purpose do you produce this?

*Mr. Giles*.—To show that Mr. Douglas did receive a sum of money on such a day at the Exchequer, and that he made a certificate to the Navy-office that he had received it.

*Lord Chancellor*.—That might be conclusive against Mr. Douglas, who admits by that entry, that he did receive that sum; but the question is this, whether in the present state of the evidence, that admission by Mr. Douglas, establishes the fact against lord Melville?

*Mr. Solicitor General*.—On the part of the managers, we submit to your lordships, that this is evidence to prove a sum of 45,000*l.* received by lord Melville. We submit to your lordships that we have already proved that Mr. Douglas was the paymaster of lord Melville. We have proved it in the first place, by a letter signed by lord Melville himself. In the next place, we have proved it by showing that Mr. Douglas acted as the paymaster for lord Melville; and, I understand your lordships to be of opinion, that what alone we have failed in the proof of is, that a letter of attorney had been executed by lord Melville, appointing Mr. Douglas to act for him, and that the letter of attorney was couched in the words which were contained in the book which was produced to your lordships. It was for the purpose of supplying that evidence that we were to produce to your lordships to-morrow, the subscribing witness to that letter of attorney; but we submit that it is not necessary for us to give evidence of that power of attorney, in order to prove that Mr. Douglas was the paymaster. Lord Melville has admitted that Mr. Douglas was his pay-

master, by his letter in which he signifies to the Navy-board that he had appointed Mr. Douglas his paymaster. We have besides proved the acts of Mr. Douglas as paymaster, and we can prove, if it be necessary, a receipt of lord Melville, after the death of Mr. Douglas, to his representatives, acknowledging him to have been his paymaster at the time of his death. We will besides prove to your lordships, that, according to the constitution of the office, the paymaster alone gives receipts for all the sums which are imprested to the treasurer of the navy. If after all this, it be necessary to prove that the treasurer of the navy actually has received and signed receipts for money, it will be a most important point indeed gained for lord Melville by his counsel; because it will be impossible for us to prove that any one sum was received by lord Melville, he not having himself received any of the public money imprested to him by the Exchequer; all the receipts of the treasurer of the navy, and all the payments of the treasurer of the navy, are receipts and payments made by his paymaster. We submit therefore to your lordships, that proving by the office book the certificate of the receipt of 45,000*l.* imprested to the treasurer of the navy, by the signature of Mr. Douglas, is proof that it was received by lord Melville.

*Lord Chancellor*.—Suppose A. B. receives at this public office a sum of money (for instance) 45,000*l.*; is there no way in which that payment can be established, except by his acknowledgment of having received it? is there no official mode independently of that, to prove the fact that the money was paid to him?

*Mr. Solicitor General*.—I am not able to inform your lordship whether that can be proved by any other means or not, but what I submit is, that this is the only proper way of proving it; that this is the public voucher for the receipt of that sum by the treasurer of the navy; that if we were to attempt to prove it by any other means, we should prove it, irregularly; and that it is by the production of these vouchers that his accounts, as treasurer of the navy, are afterwards passed. The receipt I offered to produce to your lordships in evidence, I have in my hand, and we will prove lord Melville's hand-writing to it, if it is not admitted.

*Mr. Plumer*.—We admit it to be lord Melville's signature.

*Mr. Giles*.—This is a receipt from lord Melville to the executors of Mr. Douglas, for the balance of the money due on account of Exchequer fees. Your lordships will attend to the words of the receipt, which purport that Mr. Douglas was paymaster to lord Melville, during both treasurerships.

The Receipt was read and is as follows:

"4,475*l.* 4*s.* 9*d.* London, 10th Jan. 1786.

"Then received from Archibald Doug-



las, esq. acting ex<sup>t</sup> to Andrew Douglas, esq. my late paymaster, four thousand four hundred and seventy-five pounds four shillings and nine-pence, being the amount of a balance remaining in his hands, due to me upon account of twelve thousand pounds advanced him in the course of my two treasurerships to pay Exchequer fees, &c. per account also received. HENRY DUNDAS."

*A Lord.*—It appears to me that the evidence given is in order to show the recognition, on the part of lord Melville, of this person as his official deputy; and if the letter which has been read, or the receipt last read, amount to such recognition of this gentleman as his official deputy, then I think there would be no difficulty in giving in evidence his acts of office as the acts of office of lord Melville.

*A Lord.*—I feel very great difficulty in knowing how to state the question without affecting to debate; but I apprehend—and I will take leave to put it in that way), that I may have the opportunity of receiving satisfaction from those who can give it me, as to the view with which the evidence is offered,—I conceive that if it is already proved to your lordships' satisfaction, that Mr. Douglas was the paymaster of lord Melville; and if it is already proved to your lordships' satisfaction, that by the constitution, and nature, and duty of the office, the paymaster so appointed by the principal, was to receive the money, and was in the execution of his duty, and according to the nature of it to certify such receipt of money; if that be proved, the question will then fairly arise, whether the certificate is evidence against lord Melville, and for what purposes it is evidence. It may perhaps be the effect of an anxious attention to this evidence, that it has escaped me, if it is yet proved by any thing that I can call proof, that such is the nature, and duty, and constitution of the paymaster's office; for that I apprehend must be proved either by the habitual practice in the office, or by some document stating what the nature of the office is. Supposing this to be sufficiently proved, I wish then to ask the managers whether they mean to contend, that if these facts were sufficiently proved, the certificates would be evidence, not only in a civil proceeding, to charge lord Melville with the amount of the money, but whether they would be evidence in a criminal proceeding to enable this Court to convict him of guilt.

*Mr. Giles.*—There will be no difficulty in satisfying the noble lord of the facts which he has supposed respecting the constitution of the office; and certainly, when they are proved, the managers do mean to contend that this is evidence of a payment of 45,000*l.* from the Exchequer to the treasurer of the navy, and that it is admissible evidence in a criminal proceeding. I do not say that it establishes lord Melville's criminality, for

those are two very distinct questions. Certainly, taken by itself, it establishes no criminality whatever, but must be followed up by a great variety of other circumstances, which we are in the course of proving; but I undertake to prove to the noble lord's satisfaction, that the nature of the evidence is precisely that which his lordship supposes.

*Lord Chancellor.*—The question (as it strikes me) will be this, not merely whether lord Melville would be civilly responsible for this sum of money, whether he personally received it or not; but whether in the course of this criminal prosecution, the evidence be sufficient to establish the actual receipt of that sum of money by lord Melville.

Then *Osborne Standert*, esq. was again called in, and examined as follows:

*A Lord.*—When any payment is made at the Exchequer, on account of the treasurer of the navy or his paymaster, by what authority, or upon what voucher, is that payment made.

*Mr. Standert.*—We do not know at the Navy-office.

*Mr. Giles.*—I believe the witness we propose to call to-morrow, will give the noble lord very satisfactory information upon that subject.

*A Lord.*—I wish it should be understood, that I rose for the purpose of stating to your lordships, that it did seem to me, that the managers had not gone to the length of proof which entitled them to raise the question.

[The witness was directed to withdraw.]

Adjourned to the Chamber of Parliament.

### THIRD DAY.

Thursday, May 1, 1806.

The Lords and others came from the Chamber of Parliament, into Westminster-hall, in the same order as on the first day of the trial.

*Lord Chancellor.*—Gentlemen, managers for the Commons, you may now proceed with your evidence, and the Lords will be pleased to give their attention.

*Mr. Giles.*—My lords, the managers were obliged to delay producing the entry of the power of attorney we proposed to read yesterday, owing to the absence of Mr. Dyson, who appears to be the attesting witness to it. Mr. Dyson is now attending, and, with your lordships leave, I will call him to give such account of the original power of attorney, as is within his recollection.

Then *James Dyson*, esq. was called in, and, being sworn, was examined as follows:

*Mr. Giles.*—Were you solicitor for the Admiralty in the year 1782?

*Mr. Dyson.*—Yes.



Mr. Giles.—Were you acquainted with the late Mr. Andrew Douglas, who was then paymaster to lord Melville?

Mr. Dyson.—Yes.

Mr. Giles.—Have you any recollection of being desired by Mr. Douglas to pass the patent of lord Melville, upon his appointment to the office of treasurer of the royal navy?

Mr. Dyson.—Yes.

Mr. Giles.—Have you any recollection of having provided a stamp for the power of attorney from lord Melville to Mr. Douglas?

Mr. Dyson.—I have a faint recollection of it, but no positive recollection.

Mr. Giles.—Have you any recollection of having attested such power of attorney, when executed by lord Melville?

Mr. Dyson.—I have a very slight recollection of attesting it, at the Navy-pay office in Broad-street.

Mr. Giles.—Have you any doubt that you did attest a power of attorney, executed by lord Melville, authorizing Mr. Douglas to act as his paymaster?

Mr. Dyson.—I cannot positively speak to that fact; I am inclined to believe it; beyond that I cannot go.

Mr. Giles.—Have you any doubt of having attested the execution of it?

Mr. Dyson.—I do not know very well how to answer that question; I cannot go farther than I have already done.

Then James Dyson, esq. was cross-examined, as follows:

Mr. Plumer.—Has any circumstance recently brought this to your recollection, or do you now speak entirely from your own memory upon the subject, without having recourse to any written paper that has lately been shown to you?

Mr. Dyson.—From a paper that has been shown to me this morning.

Mr. Plumer.—Without that paper, had you any memory at all of the transaction?

Mr. Dyson.—As far as concerns the passing of the patent, I am sure I could not have forgotten it.

Mr. Plumer.—Have you, independently of that paper, any recollection of attesting the power of attorney?

Mr. Dyson.—If I had been asked the question, I should, on considering, probably have recollected it without seeing that paper; but I was not thinking of it.

Mr. Plumer.—Were you asked the question, whether you recollected your having attested that power of attorney before that paper was shown you?

Mr. Dyson.—Yes; and I gave a like answer to what I have given now (and not to the managers, or any person concerned for them) before any paper was seen.

[The witness was directed to withdraw.]

Mr. Giles.—My lords, the managers for the House of Commons, propose now to read the

entry made at the Exchequer of this power of attorney; conceiving that, considering the space of time that has elapsed since the execution of it, it is quite impracticable to give your lordships more satisfactory evidence of its existence than you now have.

Mr. Plumer.—My lords, I submit to your lordships, that they have not now entitled themselves, by this evidence (understanding that they do not mean to go further), to read that entry in the book. In order to do that, it was necessary for them to establish, as a fact, the pre-existence of a power of attorney, executed by lord Melville, to that purport and effect.

We are not now in a case, where an instrument is presented to a witness, who, after a length of time, seeing his own attestation and subscription, speaks to the best of his knowledge and belief, of having done that which the attestation purports that he did. In that case, I admit, it would be quite sufficient for the witness to say what Mr. Dyson has said, *looking at the paper*, which would of itself afford a considerable degree of corroboration, confirmation, and assistance to the witness; and which, if his recollection of the fact were partial and defective, would supply him with evidence of it,—*where the instrument is in the eye of the Court*. Here we have not the instrument—we do not see the signature of the noble defendant—we have not any additional testimony whatever, to establish this preliminary fact, whether such a paper did exist or not. In order to prove it to exist, what is the evidence given? The gentleman says, I cannot positively speak to it—I am inclined to believe it—further than that, I cannot go;—I have a faint recollection upon the subject:—but he will not take upon himself positively to say, that the fact was so. My lords, is this sufficient in a criminal case? I submit it is not. The fact must be proved, not by an inclination of the witness to believe—not what he may have a faint recollection about, but what he will take upon himself positively, upon his oath, to assert was the fact, which is a necessary step to let in the secondary evidence.

Mr. Adam.—My lords, this evidence is given, in order to satisfy your lordships that the instrument proposed to be given in evidence did exist. I humbly submit to your lordships, that this is no evidence of that fact, because the recollection of the witness is so uncertain, that he does not venture to speak to a particular power. My lords, there may have been more powers than one, there may have been different powers executed; and while that is the case, and it is impossible to fix the witness to a particular recollection, I trust your lordships will not think this sufficient to entitle the evidence to be read.

Mr. Giles.—My lords, the only observation I have to make, in answer to the argument of the learned counsel, is this;—they seem to think that the witness had forgotten the



transaction, and that he recollected it only by looking at the paper. Your lordships will observe, that the witness has stated that before he had seen the paper, upon the question being first proposed to him, he gave the same account he has now given before your lordships.

My lords, doubtless an attesting witness to a transaction twenty-six years ago, cannot, unless he sees his hand-writing, speak positively and certainly to the having attested an instrument. Your lordships would be more inclined to suspect the veracity and truth of the witness, if he had so positively sworn; but, speaking with that sort of reserve, with which it becomes every man of honour and honesty to speak upon such an occasion, he tells your lordships, that he has a faint recollection of the transaction; and not only so, but recollects the place where the execution took place, namely, the Navy-pay-office, in Broad-street.—It is impossible that your lordships can expect more positive evidence of a transaction which took place so many years ago. There are other honourable managers who will address your lordships upon this point, but I do trust that the evidence which we have already produced, entitles us to read the copy entered in the Exchequer book.

Mr. Sergeant *Best*.—My lords, I do not conceive it necessary for me to add many words to that which has been addressed to your lordships. If this be not sufficient evidence to entitle us to give the next best evidence to this paper, it seems to me impossible that at such a distance of time any sufficient account can be given of any paper. In deciding this point, your lordships will take into consideration, that the rules of evidence do not require impossibilities; they only require the best account to be given of a paper, which from the nature of the case can be given.

It appears to me that the objection of the learned counsel is founded upon their keeping back, or forgetting some of the evidence that has been given. The counsel say, there is no evidence to prove that the paper attested by this witness, is the paper respecting which we are now inquiring; the learned counsel forget that the time of the execution of the power of attorney was the time when he passed the patent of Mr. Dundas; what other power of attorney could there be? What better account of it can possibly be given than has been given? It is one entire transaction; it is the power of attorney necessary to be given for the purpose of conveying to Mr. Douglas the authority which lord Melville had, and for the purpose of carrying into effect that for which the patent was then passed.

Then, my lords, it is further stated, that the witness did not recollect, but that his memory was refreshed by the paper—that proceeds on forgetting what the witness had said; for the witness distinctly says, that before he had any

conversation with any manager, before any paper was shown him, he did state, that he recollected the execution of this paper. Therefore with great deference to your lordships, I submit this case stands as strong as it possibly can stand upon a transaction which took place so many years ago; but if any further evidence need be given, perhaps there is one slight circumstance that might be added which puts this out of all doubt, and that indeed appears already before the Court, namely, that Mr. Douglas acted as the paymaster of lord Melville.

Your lordships will recollect a number of cases in which it has been decided, that the acting in a particular character is evidence of that particular character. Probably we might dispense with this altogether; and the counsel must put out of sight the letter written by lord Melville, in which he describes Mr. Douglas as being his paymaster, upon which the Exchequer acted with that gentleman as the accredited agent of lord Melville;—he could not in that character act without a power of attorney.

Lord Chancellor.—What distinct act of Mr. Douglas, in the character of paymaster to lord Melville, do you conceive you have established?

Mr. *Giles*.—The managers conceive they have fully established that Mr. Douglas was the paymaster of lord Melville, by the best possible evidence against lord Melville, the letter of lord Melville, informing the Navy-board he had so appointed him; and if I recollect right, the clerk who produced the book from the Treasury, spoke of Mr. Douglas's having acted as the paymaster of lord Melville; if not, the Bank clerk certainly did, for he attended at the Bank with lord Melville to sign the Firm Book, in order that his signature might be known at the Bank, and his drafts be answered.

Lord Chancellor.—What is the date of the power of attorney you propose to read?

Mr. *Giles*.—The 24th of August, 1782.

Lord Chancellor.—What is the date of the letter?

Mr. *Giles*.—That is the 26th, two days afterwards.

Lord Chancellor.—I wish to know whether the entry you propose to read of this power of attorney, has the appearance of an attesting witness to it, of the name of Dyson?

Mr. *Giles*.—Yes, my lord, it has; and he is described as solicitor to the Admiralty.

Mr. *Whitbread*.—The attestation is, that it was sealed and delivered, being first duly stamped, in the presence of James Dyson, solicitor to the Admiralty; and it is entered in the Treasury book 30th of August, 1782.

A Lord.—I wish Mr. Dyson to be called back, to answer a question which I do not recollect having been put to him. He stated that he prepared the paper; but I do not recollect that he stated that he had any recollection of attesting it.



Then *James Dyson*, esq. was again called in, and examined as follows:

*Lord Chancellor*.—You stated that you had a slight recollection of preparing this paper, does your recollection also go to your being an attesting witness to it?

*Mr. Dyson*.—My answer went to the attestation, and not to the making it out; I do not believe I did fill it up.

*A Lord*.—I do not apprehend that the appointment of paymaster gives the party any of that authority which he has under the power of attorney. I desire to know, whether *Mr. Dyson* recollects the purport and contents of the power of attorney which he recollects he so attested?

*Mr. Dyson*.—My recollection goes to its being of this purport—to authorize the paymaster to apply to the Treasury, from time to time, for monies to be imprested to the treasurer of the navy; and, afterwards, when the monies were deposited in the Bank, to draw them out as the cashiers should have occasion for them.

*A Lord*.—Do you believe that the power of attorney could have been drawn up for any other purposes than those you have communicated to us?

*Mr. Dyson*.—I should think, certainly not.

[The witness was directed to withdraw.]

*Mr. Giles*.—We have abundant evidence to show that *Mr. Douglas* acted as paymaster to lord Melville; but, your lordships must be aware, from the course of the proceeding, that it is the same evidence which we shall shortly lay before you in the progress of this trial. We do not wish to forestall it, but we can show, by lord Melville's confession and a variety of circumstances, that *Mr. Douglas* acted as his paymaster; though we do not now wish to press it upon the Court.

*Mr. Plumer*.—My lords, I shall make very few observations in reply. It does not appear to me that it is at all material to hear the evidence proposed to be given to prove that *Mr. Douglas* acted as paymaster. It appears to me, that two things are contended upon this subject; viz. first the character of paymaster, and all that he might do in that character officially as such, though he never had been authorized by any power of attorney to do any thing beyond it; and, secondly, a perfectly distinct question, which is now before your lordships, whether he had superadded to the character of paymaster, any authority of any kind from lord Melville. I beg that these two questions may be kept perfectly distinct. That he was the paymaster; that he acted as paymaster, I do not dispute; that is not the question. The question is, was he authorized by a power of attorney, duly executed by the noble defendant, besides his being paymaster? That I deny; I deny that they have entitled themselves to offer any evidence upon that subject. That is a separate and independent question. Now, that he ever did any one single act which might not be explained by his filling the character of paymaster alone, or that they have given any evidence upon that subject I deny. All the evidence upon the subject that has hitherto been given, is referable to that character which he indisputably possessed, and which I do not controvert. In order to show that, besides being paymaster, he was for any purpose the authorized attorney of lord Melville, they must prove it; and in proving that, it is necessary, as a substantive preliminary fact, to prove that an instrument for that purpose was executed by the noble defendant. The evidence upon that subject is defective.

The honourable manager has said, that "we have not fairly treated the question, because we consider the witness as having fortified his recollection upon the subject, by reference to a paper; whereas on a former occasion and without any reference to the paper, he said the same as he does now." I am in your lordship's recollection, whether I pressed that, or made a single observation upon it. I admitted, that he might fairly have had his recollection revived, by an observation of that paper; but when he answered in the negative, my argument proceeded upon his answer, that it was nothing more than a doubtful recollection, not a positive assertion of the fact.—That is my objection.

Now, my lords, in proving this case, your lordships are to have this fact, namely, the existence of a paper established, by precisely the same sort of evidence as you are to have every fact established before you. And it becomes an universal question—Whether if all the facts in the cause are proved by similar testimony only, that is to say, if they have no one positive witness, but all speak as *Mr. Dyson* does to this—"I have a faint recollection. I will not be positive. I have some faint idea upon the subject, but I cannot go beyond that"—Would any one of your lordships pronounce a verdict of guilty with respect to any one fact that is to be taken as proved against the noble defendant? because it is not enough that a witness says, "I have a faint recollection of it—I am inclined to believe it," but you must have positive, decisive testimony, before it is possible to convict any individual in any case whatever.

My lords, the honourable and learned manager, who spoke second upon this subject, has stated that it was impossible, at this distance of time, to do more than they have done; that the rules of evidence require nothing impossible—that they have given reasonable evidence—such as is required at this time. With great submission to the manager, the rules of evidence do not vary upon a subject like the present—the existence of a fact—either by the distance of a time when the fact happened, or by the difficulty of supplying that evidence by any other testimony. If any



difficulty has arisen from the lapse of time, or the death of witnesses, or any other cause, it does not let in inferior or secondary evidence: it is a misfortune happening to all testimony depending on living witnesses,—that it dies with the person, and when the witness is gone, you cannot supply it by any inferior or secondary evidence.

My lords, one of the honourable managers spoke of our having treated this witness improperly, when the reserve with which he has spoken tends to add additional credit to what he has said. We did not mean to say that he had not spoken to the best of his recollection on the subject; but only to insist upon this, that, after he has exercised the best memory he can on the subject, it ends in doubt; and doubtful evidence is not sufficient to establish any one fact against the noble defendant.

*Lord Chancellor.*—If any noble lord is desirous that this subject should be a matter of further consideration in the Chamber of Parliament, it will be proper that he should now move to adjourn; if not, I have formed an opinion and I will deliver it.

The question is, not whether upon Mr. Dyson's testimony alone, but, whether upon all the evidence of which the House is in possession upon the subject, this power of attorney shall or shall not be read. What is to be the ultimate effect and consequence of its being read, whether it will ever lead to any thing that may touch the noble lord is not the question. The question is, whether the House is to take as a fact upon this evidence, that such a power of attorney as purports to be entered in this book, was executed by lord Melville.

The facts upon which we are to decide are; that Mr. Douglas is dead; that his papers were in the possession of his widow, who kept them in the manner which has been described by her, and which it is not necessary to repeat; that an original, after the most diligent search, cannot be found; but that there appears an entry in the book which has been described, and which is proposed to be read, which entry bears date the 24th day of August, 1782, and is of a power of attorney of some sort or other; of what sort the book will exhibit when it comes to be read; but I asked the question of the honourable managers, whether or not the entry purported to have the attestation of that witness? for if it had not had such attestation, I should have been of opinion it was not fit to be read; but it was answered, that it was so attested. There is also a letter from the noble lord himself, in which he says he had constituted, no matter with what power, Mr. Douglas as his paymaster. The letter is silent with respect to the power, but we may safely look to the book, when it comes to be read, for the instrument by which the power was created; because the letter bears date the 26th day of August, 1782, only two days after the date of that entry proposed to be read to the House.

It was also proved, before Mr. Dyson was presented to us, that there was an entry in the book of the Bank, such as is to be found in the book of every private banker when a person opens an account, viz. the name of the party written by himself, so as to be a security, as far as security can be had, against the imitation of the hand-writing by persons guilty of forgery; and this entry has also been exhibited in evidence before your lordships. Mr. Dyson was then called; and the difficulty attending his evidence is this: that Mr. Dyson cannot be presented with the original, which he attested; he cannot look at his own attestation, *in his own hand-writing*; if he could have been shown his own attestation, in his own hand-writing, it would have been conclusive, though he had had no trace at all in his memory, that he had subscribed it as a witness. Instances of this kind must be familiar to every gentleman in the profession of the law. A witness, who has subscribed in the course of a year, in consequence of being an attorney's clerk, perhaps, five hundred different instruments, cannot possibly swear, when he is examined as the attesting witness, that he has a trace in his memory of all his attestations. He is asked, is that your hand-writing? If he were further to be asked, do you remember whether you saw that executed? In what room was it? What were the colours of the curtains? He certainly could not remember any of those circumstances, but, conscious of his own integrity, he would answer thus: I see my name here as a witness; I know I should not have subscribed it unless I had seen the act done which my name stands here to attest. This is the course of evidence, and if it were a case of high treason it would be sufficient; but for want of the original, this convincing testimony cannot be had.

The next question therefore is, does Mr. Dyson's testimony, coupled with all the rest of the evidence, go far enough to entitle the managers to read this entry? He says, that he has a *slight recollection* of the circumstance of his attestation, but he cannot swear positively to it—he cannot go any further than a recollection in his mind upon the subject; and, on being asked whether he has any doubt of the fact, he answers in a manner extremely favourable to the credit due to a witness—he does not say he has no doubt, but abides by the answer he had given. This, my lords, is sufficient; for he could have *no recollection at all* concerning it, if the fact had never existed. He is then asked by the counsel for lord Melville this question: Had you any original recollection of this, or is your recollection created by the paper shown to you? Now I will suppose, first, that he had said his recollection was only suggested by the paper, even that would not be a sufficient objection, because the paper could not suggest a recollection of what never had happened: but is it not stronger when the witness states



an original recollection of the circumstance, which recollection receives confirmation and corroboration from the paper in question? Under these circumstances, unless any noble lord should be of opinion that the matter requires further consideration, I think the paper ought to be read.

Then the Paper was read from the book, entitled, "Letters of Attorney, from August 1779 to February 1784," and is as follows:

"Know all men by these presents, that I, the right honourable Henry Dundas, treasurer of his majesty's navy, have made, ordained, constituted, and appointed, and by these presents do make, ordain, constitute, and appoint Andrew Douglas, of Suffolk-street, in the parish of Saint Martin in the Fields, in the county of Middlesex, esquire, my true and lawful attorney, for me, and in my name, and on my behalf to transact, do, perform, and execute all such matters and things, as either now do, or shall hereafter, in any manner whatsoever, appertain to the duties of my office, or place of treasurer of his majesty's navy; and is specially for me, and in my name, and to my use, to apply for, and receive of, and from the officers of the receipt of his majesty's Exchequer for the time being, all and every such sum and sums of money as shall from time to time be wanting and necessary for the due execution of my said office, and to give and sign receipts for the same; I the said Henry Dundas hereby ratifying and confirming, and agreeing to ratify and confirm, all and whatsoever my said attorney shall lawfully do or cause to be done in and about the premises, by virtue of these presents. In witness whereof, I the said Henry Dundas have hereunto set my hand and seal, this 24th day of August, in the year of our Lord 1782.

"HENRY DUNDAS, (L. S.)

"Entered 30th Aug. 1782.

"W. H. R."

"Sealed and delivered, being first duly stamped, in the presence of

"JAMES DYSON,  
Solicitor of the Admiralty"

Mr. Giles.—The managers for the Commons have taken the opportunity of the adjournment of yesterday, to consider of the production of the evidence they offered just before your lordships adjourned; they are disposed now to trouble your lordships again with that evidence, conceiving that the hesitation that was discovered to your lordships receiving it, was owing perhaps to some negligence of the managers, in not fully stating to your lordships the situation and duty of the paymaster of the navy. The particular duties of

this officer may be collected from one of the Reports read yesterday to your lordships; but, perhaps the best course that we can take, will be to call persons from the Navy-pay-office, who will give your lordships a clear and distinct account of the duty of the officers belonging to that office, previous to the passing of the statute for regulating the office of treasurer of his majesty's navy. I wish to take this opportunity of observing to your lordships, that the evidence which I am offering to the Court, is evidence in support of the first and tenth charges, and particularly relates to transactions which took place before the passing of the act.—The first charge is in truth comprehended in the tenth, the tenth being merely an amplification and extension of the first; and the evidence may therefore be said to relate to transactions which took place before the passing of the act, and which are all comprehended in the tenth charge.

Then *George Fennell*, esq. was called in, and being sworn, was examined as follows:

Mr. Giles.—Are you not the accountant to the treasurer of the navy?

Mr. Fennell.—I am.

Mr. Giles.—How long have you held any situation in the Navy pay-office?

Mr. Fennell.—From the year 1773.

Mr. Giles.—How long have you been accountant?

Mr. Fennell.—From the year 1788.

Mr. Giles.—Are you well acquainted with the duties of the paymaster and the treasurer of the navy?

Mr. Fennell.—Generally.

Mr. Giles.—Do they not generally come under your observation as accountant to the treasurer of the navy?

Mr. Fennell.—No; they do not.

Mr. Giles.—How are you then acquainted with the duties of the paymaster of the navy?

Mr. Fennell.—Generally from having belonged so long to the office.

Mr. Giles.—Does the paymaster of the navy superintend all the other officers and servants of the treasurer's office?

Mr. Fennell.—Yes.

Mr. Giles.—Did the paymaster of the navy, before the act passed, receive the money that is issued at the Exchequer for the use of the office?

Mr. Fennell.—Always, I believe.

Mr. Giles.—Do you know that of your own knowledge?

Mr. Fennell.—No.

Mr. Giles.—What were the duties of the paymaster of the treasurer of the navy before the act passed, before the year 1785, as far as you are acquainted with them?

Mr. Fennell.—A general superintendence of the duties of the office, and acting, in every respect, as I understand, for the treasurer.

Mr. Giles.—Do you know how many sub-accountants there were in the Navy pay-office before the year 1785?



Mr. Fennell.—There were only three sub-accountants, besides the paymaster.

Mr. Giles.—Of what description are the sub-accountants? how do you distinguish them?

Mr. Fennell.—The chief clerk in the cashier's or navy branch, the cashier of the victualling, and the chief clerk for the payment of wages.

Mr. Giles.—Was there a sub-accountant to each of these branches?

Mr. Fennell.—There was.

Mr. Giles.—It will be more distinct to take it the pay branch—the navy branch—and the victualling branch?

Mr. Fennell.—Yes; the navy branch, the pay branch, and the victualling branch.

Mr. Giles.—Were those sub-accountants the officers of the Navy pay-office who made all the small payments?

Mr. Fennell.—They were; except an officer for paying small contingencies.

Mr. Giles.—Did the paymaster of the navy pay, for the treasurer of the navy, money in small payments?

Mr. Fennell.—I understand the paymaster did, as it regarded Exchequer fees.

Lord Chancellor.—Do you know it of your own knowledge?

Mr. Fennell.—I always understood so. I never saw any money paid, nor ever saw any account of it.

Mr. Giles.—Explain what you mean by Exchequer fees.

Mr. Fennell.—Monies paid to the officers of Exchequer on the issues of money.

Mr. Giles.—Out of what fund are those Exchequer fees paid?

Mr. Fennell.—A specific fund.

Mr. Giles.—Do you know whether it is the duty of the paymaster of the treasurer of the navy, when he receives money at the Exchequer, to transmit receipts of that money to the Navy pay-office, or a certificate of his having received the money to the Navy-office?

Mr. Fennell.—Yes, to the navy board.

Lord Chancellor.—Do you know of your own knowledge that that is the course?

Mr. Fennell.—Yes.

Mr. Giles.—Is the navy board the superior board?

Mr. Fennell.—It is.

Mr. Giles.—Does the treasurer of the navy ever receive or pay any money himself as treasurer of the navy?

Mr. Fennell.—None to my knowledge.

Mr. Giles.—Could he make any payments of that description before the year 1785, without your knowledge, you being accountant?

Mr. Fennell.—At that time I was not accountant.

Mr. Giles.—But were you not accountant at the time lord Melville passed his accounts of the first treasurership, and during the whole of that period?

Mr. Fennell.—Those accounts have been but lately passed.

Mr. Giles.—You were accountant then at the time those accounts were passed?

Mr. Fennell.—Yes, I was.

Mr. Giles.—Did you not make up those accounts?

Mr. Fennell.—I did.

Mr. Giles.—In the course of that investigation did it appear to you that the treasurer of the navy had ever paid or received any money as treasurer of the navy?

Mr. Fennell.—It did not.

Mr. Plumer.—I am very unwilling to object, but it must be obvious that this is extremely irregular.

A Lord.—This is speaking to the contents of a written paper, which written paper must speak for itself.

Mr. Giles.—I will not pursue it now, we shall perhaps have occasion to produce that written paper before your lordships.

Then George Fennell, esq. was cross-examined, as follows:

Mr. Plumer.—What was the situation you held in the years from 1782 to 1785?

Mr. Fennell.—That of a junior clerk of the pay branch.

Mr. Plumer.—In that character had you any means of knowledge respecting the paymaster's accounts or duties?

Mr. Fennell.—Not particularly.

Mr. Plumer.—Did your knowledge then commence in the year 1788, when you were accountant?

Mr. Fennell.—As I was longer in the office I obtained more knowledge of the general business; and I stated before that my knowledge of the duties of the paymaster was general, from having been in the office.

Mr. Plumer.—If you had left the office while you were in an inferior department, should you have been able to speak with any information upon this subject?

Mr. Fennell.—Not particularly.

Mr. Plumer.—What knowledge have you now of the duty of the paymaster to transmit certificates to the navy board, of which you have spoken?

Mr. Fennell.—I know that it has been always the practice.

Mr. Plumer.—Do you know that of your own knowledge?

Mr. Fennell.—Yes, I do.

A Lord.—I desire Mr. Fennell may be asked whether, according to his knowledge, the paymaster of the treasurer of the navy is appointed by a written instrument, or how otherwise?

Mr. Fennell.—I do not know that, but from hearsay.

A Lord.—Whether you mean to say in your evidence, that the paymaster can receive one shilling at the Exchequer, unless he has a special power of attorney, given by the treasurer for that purpose?

Mr. Fennell.—I do not know it.

[The witness was directed to withdraw.]



Then *William Rose Haworth*, esq. was again called in, and examined as follows :

*Mr. Giles.*—Do you know whether the paymaster of the navy can receive any money, issued to the treasurer of the navy from the Exchequer, unless he is expressly authorized by a power of attorney, from the treasurer of the navy so to do?

*Mr. Haworth.*—Certainly not.

[The witness was directed to withdraw.]

Then *Osborne Standert*, esq. was again called in, and examined as follows :

*Mr. Giles.*—What situation do you hold in the Navy-office?

*Mr. Standert.*—Chief clerk for examining the treasurer's accounts.

*Mr. Giles.*—Do you know whether it is the duty of the paymaster of the navy when he receives money at the Exchequer, to transmit a certificate, receipt, or some document to the Navy-office, of his having so received the money at the Exchequer?

*Mr. Standert.*—I conceive it to be so, but I do not know it from authority.

*Mr. Giles.*—Is it the constant practice of the paymaster of the navy so to do, to send a certificate of the money having been received at the Exchequer?

*Mr. Standert.*—It is.

*Mr. Giles.*—Where does he send it to?

*Mr. Standert.*—To the navy board.

*Mr. Giles.*—Is the navy board the superior board?

*Mr. Standert.*—I think it is.

*Mr. Giles.*—State for what purpose is that certificate transmitted to the navy board?

*Mr. Standert.*—To acknowledge the receipt of the sums which the certificate contains.

*Mr. Giles.*—Does that acknowledgment enable the navy board to act upon it, and do they act upon it?

*Mr. Standert.*—It does.

*Mr. Giles.*—In what way do they act upon it?

*Mr. Standert.*—By assigning bills out of the sums which are received.

*Mr. Giles.*—Do you mean by assigning bills upon the treasurer of the navy?

*Mr. Standert.*—Upon the treasurer of the navy.

*Mr. Giles.*—Do the navy board ever assign any bills for payment upon the treasurer of the navy, until they have received such certificate from the paymaster?

*Mr. Standert.*—No.

*Mr. Giles.*—Is the transmission of the certificate of the receipt to the navy board, a necessary preliminary to the assignment being made?

*Mr. Standert.*—Certainly.

Then *Osborne Standert*, esq. was cross-examined as follows :

*Mr. Plumer.*—In drawing for money or assigning bills, are the board in any measure

influenced by applications from the treasurer?

*Mr. Standert.*—They are influenced entirely by the navy board, and not by any application from the treasurer.

*Mr. Plumer.*—Does the drawing for money upon the Exchequer in favour of the treasurer, originate with the treasurer or with the boards, the navy and the other boards?

*Mr. Standert.*—With the boards.

*Mr. Plumer.*—Are they, in that instance, at all influenced by any application from the treasurer?

*Mr. Standert.*—The treasurer never makes any.

*Mr. Plumer.*—Does the amount of the balance at any time in the treasurer's hand, originate from the acts of the different boards?

*Mr. Standert.*—Certainly.

*Mr. Plumer.*—Uninfluenced altogether by the treasurer or the paymaster?

*Mr. Standert.*—Certainly.

*Lord Chancellor.*—Is that which you have stated to the House in answer to the questions of the honourable manager, the invariable course of the office?

*Mr. Standert.*—It is.

*Lord Chancellor.*—Do you know it to be so?

*Mr. Standert.*—I do.

*A Lord.*—Whether the answer you have last given, applies to the period previous to passing the act in 1785?

*Mr. Standert.*—It applies to all the cases before and subsequent.

*Mr. Giles.*—I now put the book into the witness's hand, which contains the certificates transmitted from the paymaster to the navy board. I mean to produce the certificate, signed by Mr. Douglas as paymaster, transmitted in the course of his official duty, to prove that such certificate was transmitted. The effect it will have upon your lordships, when you come to read the contents of it, is another thing. I do not feel myself at all bound to state to your lordships what is the ultimate object of producing it: I contend that the evidence is admissible in this cause; that the transmission of this certificate is an act of the paymaster, done in the execution of his official duty: an act which if he does not do, as paymaster, the navy board cannot make any assignment, or any order upon the treasurer, to pay bills: it is done in the course of his official duty, in execution of a trust reposed in him by the treasurer; and therefore I submit it is admissible evidence in this cause.

*Lord Chancellor.*—What do you propose to prove against lord Melville by that certificate?

*Mr. Solicitor General.*—The managers for the House of Commons offer this evidence to your lordships, for the purpose only of proving this fact, that 45,000*l.* in the first instance—we shall offer evidence of the same kind as to other sums of money—but we now offer this evidence to your lordships only for the purpose of proving, that 45,000*l.* of public money



was issued from the Exchequer to Mr. Douglas, when paymaster, and as paymaster to the treasurer of the navy; for that purpose it is, we that offer this evidence; and we conceive, and with due respect for your lordships we contend, that it is admissible evidence to prove that fact, and that that fact is material to the issue which is joined between the Commons of Great Britain and Ireland, and lord viscount Melville.

Your lordships, I apprehend, will not call upon us at this stage of the cause, to say, what are all the uses which we mean to make of that fact; however, it is our intention to show, that of that 45,000*l.* so issued to the paymaster of my lord viscount Melville, 5,000*l.* were never applied to any public service; and that some part of it was applied by my lord viscount Melville to his own private use. We offer this evidence, and with due respect to your lordships, we insist that we are entitled to have it received.

Mr. Plumer.—My lords, the honourable and learned manager having distinctly answered for what purpose this evidence is proposed to be adduced, the question now arises, whether it is competent evidence to be received for that purpose. The question does not now stand in the vague manner in which it was originally presented to your lordships,—whether to prove any act, or any course of office, this document is proper evidence; but it is now distinctly averred, by the honourable and learned manager, that he proposes to ground upon it a positive criminal charge, and insists that this is legal evidence to establish against the noble defendant, that a sum of 45,000*l.* was paid out of the Treasury to Mr. Douglas.

My lords, I object to this evidence, and insist that, upon every principle of the law of evidence, it cannot be received. The plain simple ground, upon which I object to it, is this; that it is a written declaration by one person, not upon oath, offered to affect another. Now, it is a universal principle of the law of evidence (subject to certain exceptions), that what one man says, does, or writes, behind the back of another, cannot be received in any criminal court to affect any body but himself; that if it is necessary to substantiate any fact against a person who stands accused of a crime (and there is no distinction, whether the crime be one that affects the life of the individual, or a misdemeanor only), it must be substantiated upon oath, by the testimony of a living witness. Every individual, who stands upon his trial in a British court of justice, has a clear right to have the witness brought in the front of the Court, to be submitted to his cross-examination, that he may have an opportunity of interrogating him respecting all the particulars of the fact. Therefore, if this evidence can be received, it must be under some exception to the general rule, because it certainly is not evidence within that rule. It is merely the declaration of Mr. Douglas, offered against lord Melville. Whether

it was made at one place, or at another—whether it is in writing or by word of mouth—it is nothing but a declaration of his, not made upon oath, to which he cannot be cross-examined—not made in the presence, but behind the back of the individual who is to be affected by it; and, consequently, under the general principle to which I have referred, it cannot be received in evidence.

Upon what principle is it, that, in a criminal court, evidence of this nature can be received? I presume it will be said, that the treasurer is responsible for the acts of his paymaster. I admit, that to the whole extent of his fortune, the treasurer is unquestionably responsible for the acts of his paymaster in a civil court; but, my lords, I deny altogether the consequence that such *civil responsibility* in any respect aids the present question, or makes this paper evidence.

It is not universally true, that the receipt or certificate (call it what you please) of an agent, is evidence to affect his principal. I know that, even in civil cases, that proposition has been controverted and denied by the highest authority.\* I know that in the case of *Bauerman v. Radenius* (which some of your lordships will recollect is in 7 Term Reports, 664), when the case of *Biggs v. Lawrence*, (3 T. R. 454), was cited before the late chief justice of the King's-bench, and it was stated that his lordship had repeatedly determined to the contrary at *Nisi Prius*; he acquiesced in the truth of that position, and admitted that the case of *Biggs v. Lawrence* was not to be considered as the ruling law of the day, and it has since been repeatedly over-ruled. Upon this question I speak with the more confidence from a very recent case before a court of very high authority, the court of *dernier resort* on all questions which arise in the colonies, where, in the very year that I am now addressing your lordships, in a cause in which I happened to be myself of counsel, where one of the highest legal authorities in this country was personally present, and who now sits among your lordships; before that great authority this very question was presented for consideration, whether the receipt of an agent was sufficient evidence of the actual payment of a sum of money to the principal. When the question arose, we, on the part of the appellant, in opening the case, stated that we had a receipt of that agent to prove that the debt in the East-Indies, originally of seven thousand pagodas, had been reduced to a hundred and fifty, by four several payments, acknowledged by the receipt of the agent to have been actually received by him. We were interrupted by the observation of the noble and learned lord, who then sat in that court, and the Court decided, that the receipt could not in that cause be evidence of the payment of the money, and that we must call

\* See Phillipps's Law of Evidence, 101, 102, 4th edit. and the cases there cited.



the agent to prove the fact, for that his acknowledgment of it in writing was no evidence against his principal; substantiating this doctrine, that when a fact is to be proved, you are to call the person who can prove it upon oath, and that his declaration by a written instrument is no evidence whatever.

The same doctrine was held also in a civil case, by the predecessor\* of the noble and learned lord to whom I have lately alluded, in the case of *Maesters v. Abraham* (1 Esp. N. P. c. 375), wherein that noble and learned lord decided, that the letter of an agent was not evidence against his principal.

That case, my lords, arose upon an agreement, by which the plaintiff had sold all his bark to the defendant at eighteen pounds a load, to be delivered in London. The question was, which party was to find bags for the carriage of it on delivery. To prove that the defendant had agreed to furnish bags, the plaintiff proved, that the bark had been sold by one Eyre, a broker; and he produced a letter from Eyre, addressed to him, in which Eyre said, "that the bags would be ready by a certain day." Eyre was at that time in the box as a witness. Your lordship,† as counsel for the defendant, insisted, that Eyre should be questioned as to the fact; and the letter should not be produced. It was answered, by the counsel on the other side, that Eyre was employed by the defendant, as his agent, and that the defendant was therefore bound by his acts. Lord Kenyon said, that, as agent, he would admit evidence of what he had done on account of the defendant, but that he must give that evidence himself, and not by his letter, and the plaintiff was accordingly nonsuited. This is another direct and positive authority, that, even in a civil case, a paper written by another, is not to be received in evidence to establish a fact, but that you must produce the author, if he be living; and if he be dead, you have lost the evidence.

I might also refer to another authority upon the same point, wherein the question, how far the declarations of an agent can affect his principal, came under the consideration of a very high court, the case of *Fairlie v. Hastings* (10 Ves. 127); wherein the master of the Rolls decided, that the declarations of an agent should not affect his principal, even in a civil cause, referring to the authorities I have cited, and going the full length of substantiating them.

My lords, upon these grounds I submit, that the certificate of Mr. Douglas could not be received as evidence to substantiate the payment of this sum of money, even if the question were now agitated in a civil case. But, if I were to admit, that it would indisputably be evidence against the defendant, if he were now called upon *civiliter* for this sum

of money; yet it by no means follows, that in a criminal case, it is competent and proper evidence. And here I entreat your lordships to attend to the broad and clear distinction between civil and criminal cases, and to observe how clearly, in all the rules of evidence, the law has drawn the line of distinction between civil and criminal responsibility. When I admit that the noble defendant was civilly responsible for all the money that Mr. Douglas, Mr. Trotter, or any of the sub-accountants, may have received and expended in the course of his office; your lordships will permit me to say, that, in a criminal case, he is not responsible for their acts, farther than as he was a participator in, or cognizant of them, and authorized them. The broad distinction is, that whether he knew them or not, he is civilly responsible; but he is not criminally responsible for any one act that was not adopted by him, and confirmed as his own. In a criminal court, all the civil relation, which existed between them, is put out of the question, and you consider them as two independent individuals, each responsible only for his own acts. If this were not so, consider what would be the consequence in all the civil relations of life—between master and servant—between principal and factor—between principal and agent—between owners and captains of ships—to an immense extent. The principal is responsible for all that is done, all that is said by the agent, in the course of his employment. So partners are responsible for the acts of each other, and *civiliter* the acts of one may be given in evidence against the other. But does this principle apply in a criminal case? If you indict the master of a servant, or the owner of a ship, can the act of the servant or the captain possibly be given in evidence against the defendant? No; because in a criminal case there is no responsibility; each one is responsible for his own acts only. The foundation is wanting, when you attempt to charge an individual criminally for any thing that has been done by his agent or servant.

The crime wherewith a defendant is charged, must be proved against him by his own declaration, by his own papers, by his own admission, or by testimony upon oath; that is the sound and firm ground upon which I stand in support of this objection.

I rely, first, upon the general principle that requires all facts to be proved against a person upon his trial by living testimony upon oath; and insist that the exception, which holds with respect to persons standing in particular relations to others, qualified as it is even in civil cases, as I have before stated, in a criminal case fails altogether. And I think I may challenge all the learning and ability on the other side to produce even one solitary case, in which the declaration of an agent not upon oath was ever received as evidence to affect any person on a criminal trial. I trust your lordships will not make a precedent

\* Lord Kenyon.

† Lord Chancellor Erskine.



in the present case, considering that it is evidence of a description which was never received before.

Mr. Adam.—In this question which, in my conception of it, involves one of the most important branches of the law of evidence, I trust your lordships will favour me with a few observations; although my friend has in the most luminous manner stated the grounds upon which we object to the admissibility of this evidence. The learned manager who last addressed your lordships, stated distinctly and clearly, that it was their object in this first stage of their proof to affect the noble lord criminally; indeed it would be a nugatory proceeding to introduce this as a detached fact, for your lordships' consideration. I have to contend, before your lordships, that the principle which has been laid down by my friend (the grounds of which have been explained by him), prevails universally as a principle of the law of England, and has been repeatedly declared as such by the most eminent judges. Mr. Justice Powell, in the remarkable case of the Seven Bishops, lays it down most emphatically, that there is a distinction to be taken between that species of evidence which is admissible in the common affairs of mankind, in the civil transactions of life, and that which is admissible in criminal matters.\*

My lords, the principle has been stated by my friend, that in all the intercourses of life there are a variety of civil relations, where the authority of agent will bind the principal; and he has stated to your lordships, that although the authority which is given to the agent binds the principal, it does not bind him further than in civil matters; that is, it does not make the principal criminally responsible. There is a familiar illustration of this principle which, I am sure, must enforce it upon your lordships' minds and judgments. If the proprietor of one of the ordinary conveyances in this country—a stage coach—commits any civil injury by the act of the coachman, though the proprietor is sleeping in London, when his coachman is driving at York, yet he is civilly responsible. But did any one ever hear that a person affording to the public that means of conveyance, was ever held to be criminally responsible for the act of his agent, at so great a distance? The distinction is marked and recognized, and it is clear. The question therefore is, what is the nature of the evidence that is now proposed to be produced? and what is the particular period of time?—For I trust your lordships will take that into consideration too;—that an act done by Mr. Douglas, as the mere civil agent of lord Melville, in the month of August 1782, is proposed now to be given in evidence against the noble person, within your lordships' bar, in order to prove that that noble person was guilty of a crime. If this had been a question of civil responsibility, the period at which lord Melville could have been

made civilly responsible for this act, provided it was a mere act of civil duty, would have long since elapsed; and shall it be said that under the circumstances of this case, where the accusation is of a criminal nature, where this detached and isolated fact is proposed to be introduced for the purpose of forming a ground of criminal charge, it is fit that your lordships should admit it in evidence?

Let us see in what situation the parties stand; and considering the particular situation in which Mr. Douglas would have stood if he had been alive, I take for granted, the learned managers must necessarily have produced Mr. Douglas, at your lordships' bar, as a witness, to prove these facts. Now observe the situation in which Mr. Douglas is placed. He stood in this relation to lord Melville at that time, viz.: that if lord Melville was guilty of the offence, Mr. Douglas was a participator in it; he was an accomplice. Your lordships have recently passed an act of parliament, in order to indemnify persons standing in similar circumstances. The case which has been cited by my friend, of *Maesters v. Abraham*, proves it is necessary to produce the agent, and it is not sufficient to produce the letter of the agent; therefore it is perfectly clear, that upon every principle, Mr. Douglas must have been a witness. I then ask your lordships, if Mr. Douglas had demurred to the question, whether it would have been competent for the learned manager to have resorted to another medium of proof?—to proof not upon oath; to secondary proof; to proof that certainly would have been inadmissible if Mr. Douglas had been alive, and had protected himself against answering, because he might have given evidence to convict himself of a crime. The rule of law being, that if evidence fails from such an objection, it cannot be supplied by secondary evidence; secondary evidence being only admissible, where the primary evidence is withheld by the act of one party to the cause.

The circumstance of Mr. Douglas's death puts the question in this situation, if you lose your witness in all cases you lose your fact, where it is a fact that must be proved by evidence upon oath. The principle upon which the rule is founded I take to be clear, because if the witness is not produced, and either from death, absence, or any other cause, his testimony cannot be obtained, the immediate and necessary consequence is, that there is no opportunity of explaining all the *res gesta*—there is no opportunity of entering into the transaction. If Mr. Douglas were here alive to be called to prove this isolated and detached fact, those who are attending here for lord Melville would have an opportunity of calling upon him, by cross-examination, to explain all the circumstances and the peculiarities of the transaction—all the minutiae of the business that took place at that particular time, and to obtain from the witness at your lordships' bar the proper correct antidote to

\* 12 Howell's State Trials, 304.



that poison which is attempted to be infused into this case by giving proof of the specific and distinct fact without the explanation of accompanying circumstances. I take it that this is the sound principle upon which the practice which we contend for prevails; and I take it to be clear, that upon every ground this evidence must be rejected.

Before I conclude what I have to address to your lordships upon this subject, permit me to call to the attention of some of your lordships, who are well acquainted with it, a particular case in which this question was decided, on a trial at the bar of the court of King's-bench. I refer to the trial of Mr. Stone, in the year 1796, for high treason; when the clerk of Mr. Stone who was his agent for all the general purposes of his mercantile concerns, was produced for the express purpose of proving a letter, criminally affecting Mr. Stone; it was clear and manifest that he had not the direct authority of Mr. Stone to write that letter; and the noble person who then presided in that court, lord Kenyon, together with the other judges who were present, were clearly of opinion that the letter was not admissible evidence under these circumstances, although he was his agent for all civil purposes. I take it, that when that case comes to be examined, and the civil relation of the witness with regard to Mr. Stone comes to be attended to, it is perfectly clear that if it had been a letter about the ordinary business of Mr. Stone, binding him to the payment of a certain sum of money, by an acknowledgment of the debt in the course of his business, the necessary consequence would have been that the law would have bound Mr. Stone; but the noble judge who presided, and the other judges assisting him upon that trial, were all of opinion that the letter was not evidence to affect Mr. Stone criminally.\* Under these circumstances I do trust that your lordships will not consider this certificate as competent evidence to affect lord Melville criminally.

*Mr. Solicitor General.*—My lords, it is not my intention to occupy much of your lordships' time, in answering the objection which has been stated by the learned counsel. If, however, it were my misfortune to be obliged to trespass long upon your lordships' time, on this occasion; at least, I should have the consolation to know, that it was upon some point material to the merits of the case, upon which your lordships have to decide; that your lordships' valuable time was not employed in hearing points of evidence, discussed upon facts merely introductory to the matter which your lordships are to try—in determining whether those facts have been proved, which are of public notoriety, and which have been repeatedly admitted by the defendant; at least, I should have the satis-

faction to know, that your lordships' valuable time was usefully employed; and perhaps, my lords, it may not be improper for me, before I take notice of the particular objection which is now taken, to offer to your lordships some apology, on the part of the managers, for their not being perfectly prepared yesterday, to prove, according to the strictest rules of evidence, some of the facts which they were called upon by the learned counsel to prove. I hope your lordships will think, that they were in some degree excusable, if they did not imagine that they would be called upon before your lordships, to prove, in the strictest manner, and according to the most rigid rules of evidence, facts which it could not have entered into their conception, that they would be called upon to prove at all.

My lords, the managers for the House of Commons could not forget, that, upon a very memorable occasion, when the noble lord, upon whose conduct your lordships are sitting in judgment, appeared in the House of Commons, and addressed them upon the subjects which your lordships are now to inquire into; he declared that his fame was far more valuable to him than his fortune.\* I may properly refer to this speech, because I believe it will hereafter be strictly in evidence before your lordships. My lords, bearing that in their minds, the managers conceived, that the noble lord and his friends would have thought the greatest calamity that could have befallen him, would have been, to have been acquitted by your lordships, because the managers had failed in proof of some of those facts which they were called upon strictly to prove. I offer this to your lordships only by way of apology for the managers not having been perfectly prepared with all the evidence that they were called on to produce yesterday; and I now shall take up but very little of your lordships' time upon the objection which has been stated to your lordships.

My lords, the learned counsel seem, I think, to have confounded two things, which it is extremely important should be kept perfectly distinct. The question before your lordships is not what the effect of the evidence we offer is—what the evidence which we offer to your lordships will prove—but the only question now is, whether that evidence be or be not admissible; and I believe,—I will not take upon me confidently to say, because I have not in my recollection all the cases to which the learned counsel have referred, and have had no opportunity now of looking at them; but, I believe,—in every one of those cases, the question was not, whether the evidence should be received; but whether, if received, it proved the case of the party who produced it.

My lords, the learned counsel for the noble defendant have stated to your lordships, the distinction between the civil and the criminal

\* *Vide* Stone's case, *antè*, vol. 25, p. 1311—1314.

\* *Vide* p. 586.



responsibility of a party:—They have stated, that there is a distinction as to the rule of evidence in civil cases and in criminal cases.—My lords, for the present purpose, I will not take upon myself to say, whether as an universal proposition, there be any distinction between the cases; but, in their case, I contend that there is no such distinction; and all the cases which have been alluded to by the learned counsel, only show that there is a distinction as to the effects, civilly or criminally, against the party who is to be made responsible upon such evidence; that is the only effect of the distinction the learned gentleman has stated, and has no relation at all to the question, whether it should be received as evidence. But, your lordships are to consider, that in this case, we are offering to your lordships a certificate, or if they please to call it, a receipt, of the paymaster, for public money issued to him as paymaster of the treasurer of the navy; and your lordships having decided that the evidence which we had antecedently offered was competent to prove the existence of the letter of attorney, and that letter of attorney being now in evidence before your lordships, what application can any of the cases which the learned counsel have stated, have to the case which is now before your lordships? Because, in the case of Mr. Stone, who was tried for high treason, it was held, that an agent, employed to act civilly for another, could not be considered as authorised to write a letter for him, by which he would be implicated in the crime of high treason; is it from thence to be concluded, that where a man has executed a formal power of attorney, authorising another to act for him, in every respect as his paymaster, nay, to sign receipts for him at the Exchequer, the party who has executed such a power of attorney, will not be bound by receipts which have been signed by that very person whom he has so authorised to act for him? for your lordships are not now to decide what is the effect of this evidence, but the only question now is, whether they shall be received as evidence, that the party acting under that power did sign receipts, by which he acknowledged to have received the money. Your lordships will recollect, that what we propose to prove (whether we shall succeed in it or not will be for your lordships hereafter to determine) is, that Mr. Douglas handed over part of the 45,000*l.* mentioned in that receipt, to lord Melville; and that lord Melville applied it to his own use.

Upon deciding the question, whether this is to be received as evidence or not, your lordships must give us credit for proving that which we offer to prove;—your lordships otherwise would, when deciding only upon a part of the case, make a decision which will have the effect of deciding the whole case; and your lordships perceive by this, the great inconvenience there is in having questions of this kind discussed before your lordships,

which are, in substance, questions as to the effect of the evidence after it shall have been received, but which, in form, are offered to your lordships as objections to the evidence being at all received.—Your lordships must decide, that this evidence, when received, coupled with the other evidence we are about to offer to your lordships, and which you have not yet heard, will not be sufficient to prove the facts which we undertake to prove. Your lordships must take upon you to decide that in the first instance, before you can decide that this evidence is not to be received. I think I should waste your lordships time if I took up any more of it upon this question.

Mr. Sergeant *Best*.—Perhaps I ought to apologize to your lordships for taking up any time after you have heard the arguments of my learned and honourable friend.—But my lords, the counsel for the defendant have discussed this point with so much vehemence, as to give it an appearance as if there was more in the objection, than, when it comes to be considered, there really is.—They appear also extremely anxious that your lordships should not do that, which they suppose your lordships will do if you decide for the reception of this evidence, namely, overturn the established rules of evidence—an important part of the law of the land.—My lords, we do not feel that your lordships, by deciding for the reception of this evidence, will overturn any one acknowledged rule of evidence,—on the contrary we feel, and confidently feel, that this evidence cannot be rejected without overturning all the rules upon which courts of justice have been uniformly in the habit of acting.

The learned counsel have endeavoured to distinguish between civil and criminal cases.—There is a considerable distinction between them, but that distinction consists rather in the number of facts to be proved, than in the manner of proving any of them. It is necessary that more facts should be proved for the purpose of showing that a man has money in his possession, or has had money come into his possession, so as to make him liable to the criminal law, than to make him civilly responsible; but, though more facts should be proved in one case than is necessary to be proved in the other, each particular fact is to be proved by precisely the same evidence. The law of evidence is founded on common sense, and that being the case, what is proof of a fact in one case must be proof of the same fact in every other case.\*

Your lordships know that this has been settled by a solemn decision in one of the courts of law; in the case of the Attorney General *v.* Le Merchant (2 T. R. 201), it was expressly decided that the rules are precisely the same in criminal and civil cases; if it were not so, it appears to me, that it would

\* See what was said by Grose, J. and Lawrence, J. in Stone's case, *antè*, vol. 25, p. 1313, 1314.



be perfectly impossible ever to reach the noble defendant? What is the charge against the noble defendant? It is this, that his agent having received money into his hands, the noble defendant permitted that agent to apply it to the purposes to which it ought not to be applied, and that the noble defendant himself derived advantages from such application.

What course does reason point out, for the purpose of establishing this guilt of the noble defendant? Should we first begin to prove the criminal application of the money? no, it is impossible; we must first prove that the money has been received, and after we have satisfactorily proved that, then comes the evidence to prove what has been its application after it has been received. By whom was it received? why, according to all the evidence, it was never immediately received from the Exchequer by the hands of the noble defendant: it is the course of office that it should be received by the paymaster. If we are then to be stopped here, and to be told "you cannot prove the receipt of the money by the paymaster," it is impossible we can ever reach the noble defendant, as he never received any money himself, but it was all received by the paymaster. Stop us here then, and you put an end to the charge. All the cases prove, that if Mr. Douglas were the civil agent of a private person, his act in the receipt of money would be sufficient to charge his principal with that receipt; as he was the substitute and representative and sole agent of a public officer, discharging for that officer every duty of his office, the principal himself never appearing or acting, the case is much stronger.

I will put a case, which it is impossible to distinguish from this, the case of a sheriff and under-sheriff; the acknowledgments of the under-sheriff are always taken as evidence against the sheriff. Why? because the sheriff himself never acts, but the under-sheriff always acts for him; so here, the noble defendant never acted by himself, but by his agent. And therefore, as in the case of the sheriff, the declarations and acts of the under-sheriff are proved to affect the sheriff; so, in this case the acts and declarations of the paymaster must be received in evidence; or else it would be absolutely impossible, under any circumstances, in this case, to reach the noble defendant. This certificate, which we now offer, is given to the navy board in the uniform and regular course, by this particular officer, whenever he receives any money, and upon this certificate they make up their accounts with the public. This circumstance alone gives it credit sufficient to make it evidence. Upon these grounds I trust your lordships will receive this certificate in evidence, for the purpose of proving this first fact, namely, that 45,000*l.* was actually received by lord Melville's deputy from the public. We shall then go on, and by other evidence show the concern the noble defendant himself had in the use of that money.

Mr. Plumer.—My lords, I shall detain your lordships very shortly in replying to the arguments of the two honourable and learned managers, who have urged the competency of this evidence.—In doing so I shall endeavour to confine myself to the arguments which apply to the evidence now before your lordships, and to the proceedings of this day; as I am a little at a loss to conceive how it can tend very much to shorten your lordships' proceedings, or to save your lordships' valuable time, if instead of confining ourselves to what is the evidence now before your lordships, and to the propriety of any objections taken to it, we are to enter into an argument on what passed yesterday, as to the propriety or impropriety of what was then offered as evidence.

I am quite sure the honourable manager did not do so for the purpose of conveying any insinuations against the noble defendant. I recollect the honourable and learned manager himself volunteered a question upon the competency of the evidence, when on the part of the noble defendant we were willing to have admitted the inferior evidence to be received without comment, if the honourable and learned manager had not for the very purpose of provoking discussion, insisted upon the validity of that, which was determined not to be competent evidence. I do hope, therefore, that the argument will be confined to what is the question at the present time, and I conceive it to be a little hard upon the noble defendant, that insinuations should be thrown out to his prejudice for what (if there be any thing improper in it) I hope your lordships will believe is imputable entirely to his counsel. Whatever there may be of blame, if your lordships' time is improperly for one moment occupied in any one of these discussions, I entreat of your lordships to believe that I am acting in direct opposition to the earnest intreaties of the noble defendant, who feels the greatest anxiety that an individual can feel to accelerate your lordships' proceedings, and to bring them to that termination, to which he looks forward with confidence in the justice and wisdom of your lordships.

But, my lords, it is a little hard to be told that we are wasting your lordships' valuable time, when we are endeavouring to discharge our duty to the best of our power; when we should not deserve to wear the gowns we have upon our backs, if we could stand by and suffer incompetent evidence to be recorded on your lordships' minutes; charged as we are, not solely with the care of the noble individual before your lordships, but charged to resist the admission of incompetent evidence in justice to this high court, in justice to every individual who may ever stand before this or any other court, in justice to our own honour and character as professional men. And I trust your lordships will not suffer,—more especially by these posthumous inquiries, by reference to the proceedings of an antecedent day, by reference to what the noble defendant



may have said in another place, and which does not belong, and is stated not to belong, to the present subject,—that any thing shall be inferred which trenches upon the rights and privileges of the noble defendant. It is with great satisfaction, I observe, the honourable and learned manager have recourse to these subjects, and flying from the matter before him, having recourse to antecedent proceedings, and not grappling with the present subject. I know his talents, and am rejoiced to see that he is not able to grapple with any one of the authorities I have stated, nor have any one of the learned and honourable managers been able to give any satisfactory answer to the arguments upon which we resist this evidence.

If the question now were, whether the evidence be relevant or not, and it were objected to upon the ground of its irrelevancy, I admit, that what the honourable and learned managers have said, would have some weight. But they are not now called upon to push it to all its consequences, and show all its bearings upon the subject. When the question is, whether the evidence is competent or not, how can it be material to inquire into the effect it will have hereafter? We resist it, not upon the ground of irrelevancy, for, undoubtedly, it is relevant, but upon the ground of incompetency.

Now, what answer has been given to either of the authorities we have cited? The learned managers have condescended to take notice of only one of them, the case of the *King v. Stone*; in which it is said, that a person is not to be responsible in high treason, for a letter written by his agent, without his authority.—True, and so my friend stated; but he stated it for the purpose of showing the distinction between a civil and criminal case, that a person was his authorized agent, and did in fact write letters for him, and the letters he wrote would be received in a civil court of justice; but, in a criminal case they were not evidence. Excepting that case, I have heard nothing from the learned and honourable managers, except that one of them has cited the case of the *Attorney General v. Le Merchant*. Of that case I have a general recollection, though the particulars are not stated by the honourable and learned manager; but it does appear to me, with submission to your lordships, that it has no fair application to the present subject. The question there was, whether, after notice had been given to the defendant to produce a paper in his possession, and he omitted so to do, parol evidence could be received of its contents; and, upon that occasion, it was stated that, in that respect, there is no distinction between the rules in a criminal and a civil court.—Undoubtedly not—the course of proceeding is the same; and parol evidence was admitted in that case, as it has been and will properly be in the present. But the case of the *Attorney General v. Le Merchant* was not a criminal case,—it

was a proceeding in the court of Exchequer; and all proceedings there are of a civil nature, for that court has no criminal jurisdiction whatever.—That therefore was not a criminal case, even if it were more applicable than it is. It illustrates a proposition which I do not dispute, namely, that, upon certain subjects, the rules of evidence are the same in a civil and in a criminal court. I desire it may be distinctly understood, that I do not dispute that the rules of evidence are the same in both: but the ground upon which I stand is this; that both in a criminal and in a civil court, all evidence to affect a defendant must be proved upon oath, for the reasons which have been already stated,—namely, the right of the person, to be affected by it, to cross examine and obtain explanation from the testimony of the living witness.

What is the distinction then, in civil and criminal cases, with respect to the reception of evidence? It is this; that in the application of evidence, the legality and competency of it grows out of the civil responsibility, in a civil case. It is not that the rules of evidence are at all altered, but that when you are looking at the individual who stands in a civil relation, and are pursuing it with that view, there is an identity of persons between the agent and principal, and all that one has done or said, is done or said by the other, because to that purpose they are one and the same; and thus it is that the rules of evidence properly let in all that has been done by one to affect the other. But, when there is no longer that identity of persons—when there is no longer that responsibility, as there is not in a criminal case, then what each party has done and said cannot be received against the other. That is the plain sound, and clear principle upon which we stand; not contending that the rules of law are different in the two cases, but that the ultimate result of the inquiry makes that which is competent, legal, and proper in one case, not so in the other.—What I mainly rely upon is this, that however civilly responsible lord Melville may be, for the receipts of Mr. Douglas, criminally he cannot; and, that as establishing this fact is one link of the chain, which is to be proved against the noble defendant, it must be proved by the correct evidence which is to be received in every court. I am sure your lordships will perceive that this is a most important question, not simply as it concerns the present defendant, but as it respects every individual who stands in any civil relation whatever; for, upon the same principles, on which it is argued that this evidence ought to be received against the noble defendant, every individual in the kingdom may be affected by the acts of his servant, by the acts of his factor, by the acts of his agent, by the declarations, by the books, by the writings, and the papers of others, to an extent that may affect his fortune, his character, or his life.



Then *Osborne Standert*, esq. was again called in, and examined as follows:

*A Lord.*—When a draft is made on the Exchequer, from one of the boards, alluded to by you in your last answer, what is the authority, either from the treasurer of the navy or the paymaster, by virtue of which the board draws on the Exchequer?

*Mr. Standert.*—The board never draws on the Exchequer, but always on the treasurer of the navy; the navy board write a memorial to the treasurer of the navy, to solicit at the Exchequer certain sums that are required for the service; so it is through the medium of the treasurer, not immediately to the Exchequer.

*A Lord.*—Have you seen the certificate, whether it purports to be the certificate of the paymaster, or a certificate to a person acting under a power of attorney?

*Mr. Standert.*—I have the certificate now before me, which is signed by Andrew Douglas, who acted at that time as paymaster to the treasurer of the navy.

*A Lord.*—Is it his certificate, that he has received it as attorney, or that he has received it as paymaster.

*Mr. Standert.*—He does not give his certificate in any capacity; he merely signs his name.

*A Lord.*—Whether it consists with your knowledge, that when the accounts of the payments in a particular period are passed, the treasurer swears to the accounts, and if the accounts of the period when this payment was made to Mr. Douglas, have been passed, whether the treasurer of the period must not have sworn to the accounts?

*Mr. Standert.*—It does not come within my knowledge.

*A Lord.*—Do you know whether the accounts of that period have actually been passed?

*Mr. Standert.*—The accounts of the first treasurership have been passed.

*A Lord.*—Of that period to which that certificate refers?

*Mr. Standert.*—The account in the first treasurership is passed.

[The witness was directed to withdraw.]

*A Lord.*—I desire that the witness, who stated that the treasurer's accounts of the first treasurership had been lately passed, may be called to the bar.

Then *George Fennell*, esq. was again called in, and examined as follows:

*A Lord.*—Whether it consists with your knowledge, one way or the other, that the accounts of the first treasurership of lord Melville have, or have not been passed?

*Mr. Fennell.*—The final account of the first treasurership was delivered to the auditors for that purpose in February, 1805. I have heard that they are passed, but I do not know it.

*A Lord.*—From whom did you receive your orders with regard to the duties of your office?

*Mr. Fennell.*—From the then treasurer.

*A Lord.*—Are those orders delivered to you in writing?

*Mr. Fennell.*—No.

*A Lord.*—In what manner are they delivered?

*Mr. Fennell.*—By a communication from the paymaster.

*A Lord.*—How is this communication made?

*Mr. Fennell.*—Verbally.

*A Lord.*—Whether these verbal communications are made before witnesses?

*Mr. Fennell.*—I do not remember any such circumstance.

*Lord Chancellor.*—If the honourable managers for the Commons, or the counsel for lord Melville consider that what has passed since their argument has made it necessary that they speak to the evidence as it now stands before the Court, the Court will hear them.

*Mr. Giles.*—The managers for the Commons do not apprehend that any thing that has passed from the witnesses makes it necessary to offer any further observations; but I wish to suggest this to the Court, that there may not be any mistake with respect to the power of attorney—

*Lord Chancellor.*—The honourable manager will confine himself to what has fallen from the witnesses, since the matter was spoken to before; because the Commons have no right to be heard, except upon the evidence that has been given since the conclusion of the argument.

*Mr. Giles.*—My lords, it was not my intention to trouble your lordships with any observations upon the arguments you have heard; and if I now do so, it is only for the sake of insisting upon and maintaining that right which the Commons contend is their acknowledged and undoubted privilege, the right of being heard after the counsel for the defendant has made his observations in reply. It has been invariably admitted, when required, and it is merely for the sake of not abandoning this privilege which we insist upon, that I now trouble your lordships with a single observation upon the reply of the learned counsel. The learned counsel for the noble defendant has confounded two things which are totally dissimilar and distinct; he has professed to lay down the rules of evidence in criminal as well as in civil cases, and has said that he would state the distinction between them. Yet he has not stated any distinction whatever between the rules of evidence, but only between the rules of responsibility. The rule of responsibility is certainly different in civil and in criminal cases, but the rule of evidence must continue the same. The rule of responsibility I take to be this, that a man may be civilly liable for the act of his agent, even without knowing any thing of what his agent has done, but he certainly



cannot be criminally liable for the act of such agent, if done without his knowing it and his mind going along with the act. But the evidence to prove the act must still be the same, whether the object of the suit be criminal or civil responsibility, and that which is evidence in one case must be so in the other.

My lords, I have made these observations merely for the purpose of exercising the privilege, and insisting upon the right of the Commons to reply, not doubting your lordship's judgment upon the question.

*Lord Chancellor.*—The right of the Commons to reply was never doubted or disputed; but their right, like every other, may be waived or abandoned; and I conceived it to have been abandoned, from the honourable managers not having presented themselves to the Court, before the counsel for lord Melville had proceeded.

*Mr. Giles.*—I am commanded by the managers to state that they are perfectly satisfied, and are sorry for having given your lordships so much trouble.

*Lord Chancellor.*—Unless any noble lord shall think that this question is involved in such difficulty as to make it convenient for your lordships to adjourn to the Chamber of Parliament for further consideration of it, I will now deliver my opinion.

I think that the whole difficulty of the argument consists in not distinguishing between the fact which is to be established, and the ultimate effect which is aimed at from its establishment, when connected with additional evidence, which may or may not follow, after the fact in question is admitted to proof. The evidence is offered by the managers to establish an article in charge; namely, that the noble lord did take and receive from and out of the monies from time

to time issued to him, as treasurer of his majesty's navy, large sums of money amounting to such a sum; and then the article goes on to charge upon the noble lord a misapplication of the money so received by him. But, before it is possible to impeach the conduct of the noble lord, in the application of monies issued to him from the Exchequer, it must first be proved that money was issued; and the fact proposed to be established extends no further than to show that a person appointed by him as his paymaster, did, in the ordinary course of business, as it appears by certificate transmitted to him from the navy board, and from his own acknowledgment in writing, receive from the Exchequer a sum of 45,000*l.* But whether the money thus issued to the paymaster ever reached the noble lord; or, whether, having reached him, he made any criminal misapplication of it, is a question which it is impossible to suppose that the fact of this receipt by the paymaster can establish; and, therefore, in allowing this receipt of Mr. Douglas, to be read, nothing is proved but that this sum of money was issued out of the Exchequer to Mr. Douglas, he having authority and power to receive it, under the power of attorney from lord Melville. This first step in the proof must advance by evidence applicable alike to civil as to criminal cases; for a fact must be established by the same evidence, whether it is to be followed by a criminal or civil consequence; but it is a totally different question, in the consideration of criminal as distinguished from civil justice, how the noble person now on trial may be affected by the fact when so established:—The receipt by the paymaster would in itself involve him civilly, but could by no possibility convict him of a crime.

Then the entries were read, and are as follow :

“ 6th November, 1782.

“ Received at his Maj<sup>y</sup>'s Exchequer in money, out of the following funds, the sum of £45,000, for the Services following, *viz.*

£.23,645 2 7 out of money paid into the Exchequer by Frederick Vane, Esquire, Treasurer of Chelsea Hospital.

21,354 17 5 in money out of the Sinking Fund, Anno 1782.

£.45,000—

On the Head of Wear and Tear.

To pay Imprests and Bills of Exchange ..... £.30,000 — —

“ Wages.

To pay Bounty Imprests and other Services ..... 15,000 — —

£.45,000 — —

ANDREW DOUGLAS.”

*Mr. Giles.*—I believe it will save time, as the book is now before your lordships, if we read all the entries of a similar description that we intend to extract from it.



Then the following entries were read :

“ 22nd November, 1782.

“ Received at his Majesty’s Exchequer in money, the Sum of £.50,000, for the Services under mentioned, out of Contributions to Annuities, Anno 1782, viz.

On the Head of Wages.

|                                                                          |          |   |   |
|--------------------------------------------------------------------------|----------|---|---|
| To pay Ships and Recalls .....                                           | £.40,000 | — | — |
| To carry on Recalls on Ships Books paid the Treasurership of Mr. Barré.. | 10,000   | — | — |
|                                                                          | £.50,000 | — | — |

ANDREW DOUGLAS.

Navy Pay-Office, 19th December, 1782.

Received at his Majesty’s Exchequer in money, out of Contributions to Annuities, Anno 1782, the Sum of Ninety-three thousand eight hundred and thirty Pounds Six Shillings and Ten Pence for the Services following, viz.

On the Head of Wages.

|                                                                                                          |          |   |    |
|----------------------------------------------------------------------------------------------------------|----------|---|----|
| To pay Bounty Money and other Services .....                                                             | £.10,000 | — | —  |
| To pay Ships and carry on Recalls in the presentTrea- }<br>surership .....                               | 20,000   | — | —  |
| To pay Do. in Mr. Ellis’s Treasurership .....                                                            | 10,000   | — | —  |
| To pay for Subsistence, &c. of American Prisoners....                                                    | 2,000    | — | —  |
| To pay for Subsistence, &c. of Foreign Officers, &c. }<br>detained in England .....                      | 15,000   | — | —  |
| To pay One Quarter’s Salary to Commissioners, &c. of }<br>Sick and Wounded, due 25th December, 1782 .. } | 830      | 6 | 10 |
|                                                                                                          | 57,830   | 6 | 10 |

On the Head of Wear and Tear.

|                                                                    |        |   |   |
|--------------------------------------------------------------------|--------|---|---|
| To pay Imprests and Bills of Exchange due 15th and 17th inst. .... | 25,000 | — | — |
|--------------------------------------------------------------------|--------|---|---|

On the Head of Ordinary.

|                                                                                                                                |          |   |    |
|--------------------------------------------------------------------------------------------------------------------------------|----------|---|----|
| To pay a Quarter’s Salary to the Lords of the Admiralty, Commis- }<br>sioners and Officers of the Navy, due 25th instant ..... | 11,000   | — | —  |
|                                                                                                                                | £.93,830 | 6 | 10 |

ANDREW DOUGLAS.”

Then *Osborne Standert*, esq. was again called in and examined as follows :

*A Lord*.—You are supposed to have said that the treasurer of the navy did not receive any money at the Exchequer himself, but that it was always received by his paymaster, under a power of attorney by him. Have you said so?

*Mr. Standert*.—Yes.

*A Lord*.—Is it the usual course for the treasurer of the navy to receive money for the public service in his office, through the paymaster constituted his agent under power of attorney?

*Mr. Standert*.—It is.

*Mr. Giles*.—The next witness we propose to call, is *Mr. Gimingham*, who is a clerk in the Bank.

Then *Mr. John Gimingham* was called in, and being sworn, was examined as follows :

*Mr. Giles*.—Are you a clerk to the Bank of England?

*Mr. Gimingham*.—I am one of the three

clerks appointed to attend the Exchequer on account of the Bank of England.

*Mr. Giles*.—State for what purpose you attend on the part of the Bank of England at the Exchequer?

*Mr. Gimingham*.—To receive all monies paid into the receipt of the Exchequer, and to pay all monies issued out of the Exchequer, with very few exceptions.

*Mr. Giles*.—Is it your duty, attending as clerk from the Bank at the Exchequer, to pay the money which is ordered to be imprested to the treasurer of the navy or to his paymaster?

*Mr. Gimingham*.—We pay the money to the treasurer of the navy in consequence of an order which we receive from the Tellers office, from whence the money is to be issued.

*Mr. Giles*.—Do you pay the money to the treasurer of the navy, or to his paymaster?

*Mr. Gimingham*.—To the treasurer of the navy, or his representative.

*Mr. Giles*.—In what mode do you pay the money either to the treasurer or his representative?



Mr. *Gimingham*.—The treasurer usually takes credit with the Bank of England for the whole of the sum to be so issued; but sometimes it happens that he chooses to have a part in Bank-notes, in which case we give him credit for the remaining sums, after deducting the money advanced in Bank-notes.

Mr. *Giles*.—Do you mean by the Bank of England, that the Bank of England give him credit for so much as he does not take in Bank-notes?

Mr. *Gimingham*.—We attend on account of the Bank of England. The money is placed by us in the Bank book for the governor and company of the Bank of England:—I conceive that we represent the Bank of England when we are there, and whatever we do is on their account.

Mr. *Giles*.—Do you know this Book?

Mr. *Gimingham*.—I know the book perfectly well, and have occasionally written in it.

Mr. *Giles*.—Do you recollect to have ever given credit to lord Melville as treasurer of the navy, or paid any money upon the application of his paymaster Mr. Douglas?

Mr. *Gimingham*.—I think I do.

Mr. *Giles*.—What book is that you now hold in your hand?

Mr. *Gimingham*.—This is the treasurer of the navy's banking book, wherein the credits are entered.

Mr. *Giles*.—Are all sums which the treasurer receives at the Exchequer, and is credited for at the Bank, entered in that book?

Mr. *Gimingham*.—They were a few years back, at the time credits were given there.

Mr. *Giles*.—I am asking to a period antecedent to the act of parliament?

Mr. *Gimingham*.—Previous to the act of parliament, the credits were entered into that book.

Mr. *Giles*.—In whose custody was that book kept?

Mr. *Gimingham*.—In the custody of the treasurer I apprehend.

Mr. *Plumer*.—Did you ever see it in the possession of the treasurer?

Mr. *Gimingham*.—No, but only of his representative.

Mr. *Giles*.—Who produced that book to you when you were at the Exchequer, to have the money so credited in it?

Mr. *Gimingham*.—The treasurer's representative, who came to receive the money, usually brought the book with him—I mean the person appointed by the treasurer of the navy to transact that business at the Exchequer.

Mr. *Giles*.—Was that person, at that time, the late Mr. Douglas?

Mr. *Gimingham*.—Mr. Douglas used to attend the Exchequer for that purpose.

Mr. *Giles*.—Refer to the entry in that book, of the 6th of November 1782.

Mr. *Plumer*.—Is it in the hand-writing of the witness?

Mr. *Giles*.—It is not an entry in the hand-writing of the witness, but an entry in this

book, which he says was a book brought by Mr. Douglas, the paymaster of lord Melville, to the Exchequer, to have the sums he received credited in that book. I propose to have that entry read, it being the Bank book of the treasurer of the navy, kept in the custody of the paymaster.

Lord Chancellor.—First ask the witness whether he has seen that book, from time to time, in the possession of Mr. Douglas, in the character of paymaster to lord Melville.

Mr. *Giles*.—Have you, from time to time, seen that book in the custody of Mr. Douglas, as paymaster to lord Melville, at the Exchequer.

Mr. *Gimingham*.—To the best of my belief, I have.

Lord Chancellor.—Look at the book; can you swear you have?

Mr. *Gimingham*.—I have no doubt about the book.

Mr. *Giles*.—After the credit was entered in that book, was the book returned to Mr. Douglas, the paymaster of lord Melville?

Mr. *Gimingham*.—I apprehend it was returned immediately.

Mr. *Giles*.—Did you, when you made entries of credits in that book, so return it?

Mr. *Gimingham*.—Immediately; as soon as the entry was made, I returned the book.

Lord Chancellor.—What is your reason for saying you apprehend it was returned? what doubt have you upon it?

Mr. *Gimingham*.—I can have no doubt at all about it.

Lord Chancellor.—Before the year 1785, and whilst Mr. Douglas was the representative of lord Melville, was it in the course of business for him to carry that book which you have in your hand to the Exchequer, to have his credits entered, and when entered, to have it returned to him, and then to carry it to the Bank for a similar purpose, and have it returned to him there?

Mr. *Gimingham*.—Whenever they received money, they usually brought the book with them to the Exchequer; and there they received credit for the money, or a part in credit, whichever they pleased, and the remainder in bank-notes.

Lord Chancellor.—Was that book returned, upon those occasions, to the person who brought it?

Mr. *Gimingham*.—It was immediately returned to the person who brought it.

Mr. *Giles*.—I propose the clerk should now read the entry in that book, of the 6th of November 1782.

Then Mr. *John Gimingham* was cross-examined as follows:

Mr. *Plumer*.—Is the entry in question, in your hand writing?

Mr. *Gimingham*.—No; it is not.

Mr. *Plumer*.—Is it amongst the entries that it belongs to the Bank to make? amongst those that were made at the Bank?



Mr. *Gimingham*.—It appears to be amongst the entries made at the Exchequer.

Mr. *Giles*.—By whom?

Mr. *Gimingham*.—Either by myself, or by one of those two who attended with me.

Mr. *Giles*.—Who were those two?

Mr. *Gimingham*.—Bank clerks, as well as myself.

Mr. *Plumer*.—Have you, independently of that entry, any recollection of the fact?

Mr. *Gimingham*.—I can only say, that I have not the smallest doubt of it; but as to an immediate recollection, I cannot undertake to state that, owing to its being so many years back.

Mr. *Plumer*.—Is that confident belief of the fact which you express, derived entirely from the entry in that book?

Mr. *Gimingham*.—It does not immediately arise from the entry in the book, but from some recollection of the transaction at the time.

Mr. *Plumer*.—Could you, without that book, have recollected either the sum, or the date, or any particular respecting it?

Mr. *Gimingham*.—I could not undertake to do that.

Then Mr. *John Gimingham* was re-examined as follows:

Mr. *Giles*.—Will you look at the next entry, the entry of the 23rd of November, 1782, and inform the Court whose hand-writing that is?

Mr. *Gimingham*.—That is the hand-writing of one Mr. Reuben Ettie, who is now dead.

Mr. *Giles*.—Was he one of the Bank clerks who attended at the Exchequer at that time?

Mr. *Gimingham*.—He was one of the Bank clerks who attended at that time.

Mr. *Giles*.—In whose hand-writing is the entry you refer to, of the 6th of November?

Mr. *Gimingham*.—In the same hand-writing.

Mr. *Giles*.—Are you well acquainted with the hand-writing of Mr. Reuben Ettie?

Mr. *Gimingham*.—Perfectly well with both.

Mr. *Giles*.—Refer to an entry of the 19th of December, 1782, in the same book, in whose hand-writing is that entry?

Mr. *Gimingham*.—In the same hand-writing.

Mr. *Giles*.—Have you ever made any entry of the same description in the book yourself?

Mr. *Gimingham*.—Two or three entries, I believe; there are two entries of my making of the 8th of November, 1782; I made a credit to the treasurer of the navy for 39,000*l*.

[The witness was directed to withdraw.]

Mr. *Giles*.—Perhaps it will be more satisfactory to your lordships, before I read the entry, that I should show from whence the book came; it was found amongst Mr. Douglas's papers.

Then *John Winter*, jun. esq. was again called in, and examined as follows:

Mr. *Whitbread*.—Do you know that book?

Mr. *Winter*.—I do.

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Mr. *Whitbread*.—Have you had possession of that book?

Mr. *Winter*.—I have.

Mr. *Whitbread*.—Where did you find that book?

Mr. *Winter*.—Amongst the papers found in the possession of the widow of the late Mr. Douglas.

Mr. *Whitbread*.—Has it been in your custody ever since?

Mr. *Winter*.—It has.

[The witness was directed to withdraw.]

Mr. *Giles*.—We propose to read the entry in this book, it being the Bank book of lord Melville, kept in the custody of his paymaster, Mr. Douglas.

Mr. *Plumer*.—I wish to ask Mr. *Gimingham* a question.

Then Mr. *John Gimingham* was again called in, and examined as follows:

Mr. *Plumer*.—Whether the proper custody of the book was that of Mr. Douglas, or it ought to have been in the Bank?

Mr. *Gimingham*.—Whenever a book is taken from the Exchequer, we know nothing more of it officially, because any individual can brink his Bank book, and receive a credit at the Exchequer for the money issued to him; when so done, he takes the book, and we see no more of it till he comes to receive again.

Mr. *Whitbread*.—Read the title of that book.

Then the title of the book was read, and is as follows:

“Old account of the Right Honourable Henry Dundas, Bank 1782, D<sup>r</sup>.

“The Bank of England with the Right Honourable Henry Dundas, C<sup>r</sup>.”

Mr. *Whitbread*.—We offer the whole of this book in evidence, and desire that an entry of the 6th of November may now be read.

Mr. *Plumer*.—My lords, the honourable managers offer an entry to be read, which is not authenticated by the witness, but is only an entry contained in this book; I hope your lordships will quite understand me, that when I do not object to this book, it is upon grounds which apply peculiarly to this book and this entry, and that I do it without prejudice to any question that may arise with respect to any other book, not in the same situation with the present.

Then the following entry was read:

“November 6th, 1782. To Mr. Beldam, R. E. 40,000*l*.”

Mr. *Whitbread*.—This entry purports, that the treasurer of the navy is credited at the Bank on the 6th November, 1782, for the sum of 40,000*l*.

Then the following entries were read:

1782.

£.

“Nov<sup>r</sup>. 22. To Mr. Willis, R. E. 47,000 0 0

“Dec<sup>r</sup>. 19. To ditto, Ettie 90,830 6 10.”

3 D



Mr. *Giles*.—Your lordships will be so good as to observe the dates of these entries, corresponding with the dates in the certificate book, of 45,000*l.* being received on the 6th of November; 50,000*l.* being received on the 22nd of November; and 93,830*l.* 6*s.* 10*d.* on the 19th of December, 1782; there being only 40,000*l.* entered to the credit of the Bank, at the time of 45,000*l.* being received.

Mr. *Giles*.—Did you attend as a clerk of the Bank at the Exchequer, on the 6th of November, 1782?

Mr. *Gimingham*.—I did.

Mr. *Giles*.—Did you pay to the paymaster of the navy any sum in bank-notes, as part of the sum that he was to receive that day at the Exchequer?

Mr. *Gimingham*.—Yes; 5,000*l.* in bank-notes.

Mr. *Giles*.—State the day, the number, and the sum of each note. What is the book you have in your hand?

Mr. *Gimingham*.—This is the book wherein we enter all notes that are issued at the Exchequer, on account of the governor and company of the Bank of England.

Mr. *Giles*.—Is the entry, to which you are called upon to refer, in your own hand-writing?

Mr. *Gimingham*.—It is.

Mr. *Giles*.—State the dates, the numbers, and the sums of the notes, you paid to Mr. Dundas on the 6th of November?

Mr. *Gimingham*.—No. 9, 1,000*l.*; No. 10, 1,000*l.*; No. 11, 1,000*l.*; No. 12, 1,000*l.*; No. 13, 1,000*l.*; all dated 24th October, 1782; 5,000*l.* altogether.

Mr. *Giles*.—Is the note you now hold in your hand, one of the notes you paid on the 6th of November to Mr. Douglas?

Mr. *Gimingham*.—I have no doubt but it is.

Mr. *Giles*.—Which number is it?

Mr. *Gimingham*.—No. 12.

Mr. *Giles*.—Look to the entry of the 22nd of November, 1782, in the same book, and state whether you on that day paid any, and what sum, in bank-notes, to Mr. Douglas?

Mr. *Gimingham*.—On that day we paid to Mr. Dundas—

Mr. *Plumer*.—Is that entry in your hand-writing?

Mr. *Gimingham*.—It is; we paid 3,000*l.* on the 22nd of November to lord Melville.

Lord Chancellor.—Are you able to ascertain by the entry, or otherwise, that 3,000*l.* was paid to lord Melville, or was it paid to Mr. Douglas?

Mr. *Gimingham*.—I apprehend it was paid to Mr. Douglas; I never saw his lordship at the office.

Mr. *Giles*.—State the dates, the numbers, and the sums of the notes which you paid on the 22nd of November?

Mr. *Gimingham*.—The notes were paid on the 22nd of November, 1782.

Mr. *Plumer*.—Is that entry your own hand-writing?

Mr. *Gimingham*.—It is.

Mr. *Giles*.—What are the dates of the notes?

Mr. *Gimingham*.—The 7th of November, 1782.

Mr. *Giles*.—What are the numbers?

Mr. *Gimingham*.—No. 212, 213, and 214, each of 1,000*l.* in value.

Mr. *Giles*.—Look at that note; is that one of the notes which you paid on that day?

Mr. *Gimingham*.—I have no doubt but it is; it is No. 212.

Then Mr. John *Gimingham* was cross-examined, as follows:

Mr. *Plumer*.—Does it appear upon your book, that those notes, paid on the 22nd of November, were paid to Mr. Douglas, because you say you apprehend so? Does it appear upon the book that it was so?

Mr. *Gimingham*.—The notes are written off in the name of Mr. Dundas; but I apprehend that Mr. Douglas received them.

Mr. *Plumer*.—Have you any recollection whatever of the fact?

Mr. *Gimingham*.—I have no doubt at all of the transaction.

Mr. *Plumer*.—Have you any memory of the transaction, independent of the book?

Mr. *Gimingham*.—I cannot say that I immediately recollect the transaction.

Mr. *Plumer*.—What is your reason for saying you have no doubt of the transaction?

Mr. *Gimingham*.—I have no doubt of it because it is my own act and deed.

Mr. *Plumer*.—What is your reason for saying, you think you paid it to Mr. Douglas?

Mr. *Gimingham*.—Only because Mr. Douglas usually attended upon that business.

Mr. *Plumer*.—Whether the other entries you speak to, do not specify that the payments were made to Mr. Douglas personally?

Mr. *Gimingham*.—Wherever Mr. Douglas's name appears in the book, he had the notes.

Mr. *Plumer*.—Do these entries contain, upon the face of them, that the payments were made to Mr. Douglas? Turn to the entry of the 6th of November.

Mr. *Gimingham*.—That on the 6th of November is entered in the name of Mr. Douglas.

Mr. *Plumer*.—Can you explain why the entry in that case should contain the name of Mr. Douglas, and in another the name of Mr. Dundas?

Mr. *Gimingham*.—It sometimes happens that both names are made use of.

Mr. *Whitbread*.—Were the names indiscriminately used?

Mr. *Gimingham*.—They were usually written off in the name of the person who received the notes.

Mr. *Whitbread*.—In fact, were those payments of the 6th, and the other of the 22nd of November, made on account of the treasurer of the navy?

Mr. *Gimingham*.—No doubt they were.



Mr. Plumer.—Whether, independent of the book, you have any recollection of any instance in which a payment was made to Mr. Douglas personally, and it was entered under the name of Mr. Dundas?

Mr. Gimingham.—I do not immediately recollect any.

Lord Chancellor.—Could you have paid the money either upon the 6th of November, or the 22nd, to any body but Mr. Dundas, or Mr. Douglas?

Mr. Gimingham.—Not unless he came from the treasurer of the navy's office.

Lord Chancellor.—Should you have paid it to any person, if he had stated that he came from the treasurer of the navy, though it had not been Mr. Douglas?

Mr. Gimingham.—Yes; our authority is derived from the tellers of the Exchequer, by whose authority we give credit to the treasurer of the navy.

Mr. Plumer.—If either the treasurer in person, or any person that appeared to be authorized by him, came for money upon the credit of that treasurer, you would have paid it?

Mr. Gimingham.—Provided he came from the teller's office, to receive on account of the treasurer, we should pay him the money.

Mr. Whitbread.—What authority should you have demanded from any person who had come, stating himself to be deputed by the treasurer of the navy?

Mr. Gimingham.—Provided he brings the bank-book, we ask no questions of that sort.

Mr. Plumer.—What bank-book do you mean?

Mr. Gimingham.—The treasurer's bank-book; any person bringing this book with him, with an order from the tellers of the Exchequer, would immediately receive credit, or part in bank-notes, as he thought proper.

Mr. Plumer.—Whether the person to whom you made these two payments of the 6th and 22nd of November, had in fact that book in his possession at the time you made those payments to him?

Mr. Gimingham.—He brought the book with him.

Mr. Whitbread.—We wish to put this other book into the hands of the Witness. What book is that?

Mr. Gimingham.—It is the bank-note book.

Mr. Whitbread.—Is that of the same description as the book you had last in your hand; the bank-note book?

Mr. Gimingham.—Exactly the same.

Mr. Whitbread.—Is the entry of the 19th December in your own hand-writing?

Mr. Gimingham.—It is not.

Mr. Whitbread.—In whose hand-writing is that entry?

Mr. Gimingham.—I believe Mr. Ettie's.

Mr. Whitbread.—Do you know that to be Mr. Ettie's hand-writing?

Mr. Gimingham.—To the best of my knowledge and belief it is.

Mr. Whitbread.—Was Mr. Ettie at the Ex-

chequer on the 19th of December, at the time that entry was made?

Mr. Gimingham.—No doubt he was.

Mr. Whitbread.—And you were at the Exchequer also?

Mr. Gimingham.—I apprehend I was, but I cannot take upon myself to say that.

Mr. Plumer.—Surely, my lords, this entry can never be evidence as it now stands; this is no book of which your lordships have had any account; where it comes from, and what book it is, we know not at all; but an entry is going to be received, because it is Mr. Ettie's hand-writing: how this can be evidence I cannot conceive.

Lord Chancellor.—You say you never saw lord Melville at the Exchequer yourself?

Mr. Gimingham.—Not that I know of.

Lord Chancellor.—Do you remember, during the period you are speaking of, when Mr. Douglas was paymaster, any other person than him bringing that Bank book?

Mr. Gimingham.—I believe there have been instances of another person bringing the book.

Lord Chancellor.—Do you remember instances of other persons bringing the Bank book during Mr. Douglas's time, besides himself?

Mr. Gimingham.—I cannot charge my memory with that, but I believe it to be so.

Mr. Plumer.—If other persons had come with the Bank book to receive the money on account of the treasurer, professing to come from him, would it not have been entered in the name of Mr. Dundas or Mr. Douglas, and not in the name of the individual who came to receive it?

Mr. Gimingham.—The payment would have been in the name of the person receiving it; that is the usual practice.

A Lord.—How does it happen, that in the entry of payments in the name of the person receiving them, Mr. Dundas's name should have found its way here?

Mr. Gimingham.—When the name of Mr. Dundas has been entered, it has been to correspond with the credit of part of the sum which was issued on that day.

A Lord.—Under what circumstances can it be for the purpose of making this credit correspond, when it at the same time appears that Mr. Dundas's name is entered, when he had not received the money; and, that on another occasion, the person's name is entered who actually did receive the money?

Mr. Gimingham.—It was quite a usual thing; the credit went regularly to the treasurer's account, but the bank-notes were frequently written off in the name of the person who came to receive them.

A Lord.—Are we then to understand, that whenever Mr. Dundas's name appears there, the payment was not made in bank-notes; and that when the payments were made to other persons, they were made in bank notes?



Mr. *Gimingham*.—When there were no bank-notes paid, my lord Melville's name only appeared as the creditor.

A *Lord*.—Whether, when lord Melville was first appointed treasurer of the navy, you would have credited his account at the Bank, without having a power of attorney authorizing you for that purpose?

Mr. *Gimingham*.—We do not give any credit at the Bank, only at the Exchequer.

Mr. *Whitbread*.—The managers are extremely desirous of feeling, that what has been proved has been properly understood by your lordships. The receipt book has been proved, which, to take one date (the 6th of November 1782) shows, that Mr. Douglas gave a certificate to the navy board of having received at the Exchequer the sum of 45,000*l*. The banking book shows to your lordships, that on that day a credit was written in to the treasurer of the navy of 40,000*l*. only. The next book which Mr. *Gimingham* produces, shows, that on the 6th of November, he, in his own hand-writing, entered five notes of 1,000*l*. each, from No. 9 to 14; which bank-notes were paid to Mr. Douglas:—farther than that, we have put in one of those bank-notes which the witness here supposes was one of the identical bank-notes which he so paid to Mr. Douglas.—With regard to the payments of the 22nd of November, it has also been shown by the same mode of proof, that Mr. Douglas certified at the navy board, that he had received at the Exchequer 50,000*l*.; in the banking book it is shown, that there was carried to the credit of the treasurer of the navy on that day 47,000*l*. only: and the witness has proved, that he paid to a person, who he says was Mr. Douglas, on that day, although written in the name of Mr. Dundas, three bank-notes of 1,000*l*. each; which makes up the credit of 50,000*l*. acknowledged by Mr. Douglas: and one of those notes is now actually before your lordships in evidence, which he says is one of the bank-notes he so paid, on account of the then treasurer of the navy, Mr. Dundas, to Mr. Douglas.

A *Lord*.—Is it to be understood, that when the entry appears in the name of Mr. Dundas, the entry was so made under that name, in consequence of a credit being transferred, and that in those cases bank-notes were not delivered; but that the entry in other names, was, when bank-notes were delivered as part of the payment?

Mr. *Gimingham*.—We give credit in consequence of an order which we receive from the tellers of the Exchequer, if the person who receives the money wishes to have a credit for the whole, the sum is immediately entered in his bank-book; but if he chooses a part in bank-notes, then the remainder only is carried to the credit of the treasurer's account.

A *Lord*.—Whether there is any entry in the banking-book to the credit of Mr. Dundas, other than as treasurer of the navy?

Mr. *Gimingham*.—I can only answer to the credits which are made at the Exchequer.

A *Lord*.—Confine your answer to the credits made at the Exchequer. Were there any other credits at the Exchequer made to Mr. Dundas, than as treasurer of the navy?

Mr. *Gimingham*.—None other that I know of.

A *Lord*.—You have stated that on the 22nd of November, you paid 3,000*l*. in bank-notes, the dates of which notes, and the numbers, you have given to the Court; do you know whether those sums were entered in the name of Mr. Dundas, or Mr. Douglas, or either of them?

Mr. *Gimingham*.—I must beg leave to refer to the book;—on looking at the book, I see that on the 22nd of November, 1782, 3,000*l*. was paid in bank-notes, and written off in the name of Mr. Dundas.

A *Lord*.—Can you give any reason why those three notes of 1,000*l*. each, were written off in the name of Mr. Dundas, when you say that you never saw Mr. Dundas at the Exchequer, and therefore the payments could not be made to him?

Mr. *Gimingham*.—No particular reason; it was a casual thing, whether they were written off in the name of the treasurer of the navy, or of the person who represented him; it was sometimes in one way, and sometimes in another.

A *Lord*.—Whether, under whatever name those entries were made, they were not all understood by you to have been made on account of the then treasurer of the navy?

Mr. *Gimingham*.—Undoubtedly.

A *Lord*.—Whether the entry in the bank-book, on the 6th of November, 1782, does not appear on the face of it to be an entry to the credit of the treasurer of the navy, as well as the person to whom the notes were paid?

Mr. *Gimingham*.—Exactly the same. It all goes to the treasurer's account, either in the shape of a credit, or in bank-notes.

[The witness was directed to withdraw.]

Then Mr. *William Heald* was called in, and being sworn, was examined as follows:

Mr. *Whitbread*.—Are you a clerk in the banking-house of Messieurs Drummond?

Mr. *Heald*.—Yes.

Mr. *Whitbread*.—Were you a clerk in that house in the year 1782?

Mr. *Heald*.—I was.

Mr. *Whitbread*.—What is the book which you have before you?

Mr. *Heald*.—We call it the Waste-book.

Mr. *Whitbread*.—Have you written in that waste-book at any time?

Mr. *Heald*.—I have.

Mr. *Whitbread*.—Refer to an entry of the 29th of November, 1782. Are the entries made on that day, or any of them, in your hand-writing?

Mr. *Heald*.—They are.



Mr. Whitbread.—Is there an entry on that day to the credit of the right honourable Henry Dundas?

Mr. Heald.—There is.

Mr. Whitbread.—Is that credit written in your hand-writing?

Mr. Heald.—It is.

Mr. Whitbread.—What is the amount of that credit?

Mr. Heald.—Six hundred pounds.

Mr. Whitbread.—Is there a debit on that day to the right honourable Henry Dundas?

Mr. Heald.—I do not know that there is.

Mr. Whitbread.—How was that six hundred pounds paid?

Mr. Heald.—By a bank-note for 1,000*l.* letter K, No. 212.

Mr. Whitbread.—Of whom did you receive that bank-note?

Mr. Heald.—By the entry, it appears from Mr. Dundas; but that I cannot swear positively to.

Mr. Whitbread.—From the nature of that entry, in the common course of business in your house, do you apprehend, believe, or know that Mr. Dundas must be the person who so paid that note?

Mr. Heald.—It would appear to have been brought by Mr. Dundas, but I cannot swear so: it might be from some other person immediately from him, and not by his own hands.

Mr. Whitbread.—If the payment had been made, on account of Mr. Dundas, by any person other than Mr. Dundas himself, would the entry have been precisely what that entry is?

Mr. Heald.—No; the name of the person would have stood at the top of the entry.

Mr. Whitbread.—Does any name now stand at the top of the entry, or any name appear but that of Mr. Dundas?

Mr. Heald.—None.

Mr. Whitbread.—What became of the 400*l.* balance of the 1,000*l.* note?

Mr. Heald.—I paid the difference in bank-notes and cash.

Mr. Whitbread.—To whom?

Mr. Heald.—That I cannot take upon myself to say.

Mr. Whitbread.—Was it to the person who appeared making the payment according to the entry which you have stated to be contained in that book?

Mr. Heald.—It was to that person—it might be by Mr. Drummond—he might have given me the note, and I might have returned the money to him—I had instructions to give credit for 600*l.* and to return the difference in bank-notes and cash.

Mr. Whitbread.—You know that this credit was entered to Mr. Dundas for 600*l.* by yourself, and that the change was given of the bank-note to the person who produced the note, which is the subject of that entry?

Mr. Heald.—I apprehend that to be the case.

Mr. Whitbread.—Does this note now in your hand for 1,000*l.* correspond with the note entered in that book, a part of which was carried to the credit of Mr. Dundas?

Mr. Heald.—The number and the sum correspond.

Mr. Whitbread.—Is the number and the sum the whole of the entry?

Mr. Heald.—It is.

Mr. Whitbread.—Is there any other book belonging to the house of Messieurs Drummond, in which any entry is made respecting this note?

Mr. Heald.—There is.

Then Mr. William Heald was cross-examined as follows:

Mr. Plumer.—Whether, independently of the book that lies before you, and the entry it contains, you have any memory of the transaction to which you have spoken?

Mr. Heald.—None.

Mr. Plumer.—If the money had been given to you, or the note brought to you by Mr. Drummond, whose clerk you were, with directions to make an entry in that book, you yourself not having taken any part in the transaction at all, would the entry have been the same in that book, that it is now?

Mr. Heald.—Yes.

Mr. Plumer.—Can you now say with any certainty, whether the transaction took place with yourself, or whether it was through the medium of Mr. Drummond that you made that entry?

Mr. Heald.—The entry is made by myself, but I cannot answer who delivered me the money.

Mr. Plumer.—Have you the least recollection of the noble defendant having come to you with any such note?

Mr. Heald.—None.

Then Mr. William Heald was re-examined, as follows:

Mr. Whitbread.—Whether you ever saw the person of the noble defendant in the banking-house of Messieurs Drummonds?

Mr. Heald.—I have.

Mr. Whitbread.—Whether you ever received any money from the hands of Mr. Dundas, to place to his credit?

Mr. Heald.—It is impossible for me to answer that question.

Mr. Whitbread.—Whether you know, or have any recollection, of ever having in the course of your business at Messieurs Drummonds, received any sum of money, of any description, at any time, from Mr. Dundas?

Mr. Heald.—I cannot charge my memory to answer that question.

A Lord.—Suppose that this bank-note had not been brought by Mr. Dundas, and not delivered to you by Mr. Drummond himself, or by his direction, but if any stranger had come into the shop with a bank-note, and directed you to put it to the credit of Mr. Dundas,



would the entry have been the same as it is now, or would the entry have contained the name of the person bringing the note to you?

Mr. *Heald*.—It would have been the same as it is now.

Mr. *Whitbread*.—The witness has upon his oath deposed, within the last five minutes, that if any other person had brought the money for Mr. Dundas, and not Mr. Dundas himself, that he would have entered the name of that person, if he had so brought it, together with that of Mr. Dundas. I beg the witness will explain the inconsistency apparent upon his testimony?

Lord *Chancellor*.—Supposing this note had been brought by some stranger, who had directed you to place it to the credit of Mr. Dundas; you are supposed to have stated, that the entry would have had at the top of it, the name of that third person.

Mr. *Heald*.—My question to the person would be—am I to make it received of you or of Mr. Dundas? if he had said of Mr. Dundas, the entry would stand as it did; if he had said of him, the entry would be different.

Mr. *Whitbread*.—Whether you have not some private mode, either prescribed by your principals in that house, or some private mode used by yourself, for your own satisfaction, that you may be able to distinguish whether the receipt of a sum of money for which you give credit, was made to the person in whose name it is credited, or to some other person for him?

Mr. *Heald*.—Sometimes I make a private mark, but not generally; in the hurry of business I may have neglected it.

Mr. *Whitbread*.—If any one of the Messieurs Drummond, a partner in that house, and a principal, had come out of the next room, and brought him a thousand pound note, saying carry it to the credit of Mr. Dundas; whether in the usual course of your business, you would not have put some distinguishing mark to that entry, in order that you might know that you received it from some other hand than that of Mr. Dundas?

Mr. *Heald*.—I should not have made any private mark.

Mr. *Whitbread*.—What is the private mark which you usually make?

Mr. *Heald*.—Sometimes I make the letter P. to show that it was by another person.

Mr. *Whitbread*.—Is there any P to this entry?

Mr. *Heald*.—None.

Mr. *Whitbread*.—Whether this entry stands in the form those entries usually, if not universally, stand in these books, where you have received money out of the hands of the person to whose credit that money is carried?

Mr. *Heald*.—It does.

Mr. *Whitbread*.—In what manner was the specific sum of 400*l.* paid, which made the balance of the 1,000*l.*?

Mr. *Heald*.—380*l.* in bank-notes, and 20*l.*

in cash; viz. one bank-note of 40*l.*, two of 30*l.*, four of 25*l.*, five of 20*l.*, four of 15*l.*, and two of 10*l.*, and 20*l.* in cash.

Mr. *Plumer*.—You were asked whether the letter P was put opposite the entry in question, to show that the money was paid by another person—I wish now to ask you whether, notwithstanding the letter P is not to this, it enables you, with any certainty, to say whether it was money brought by Mr. Dundas, or by any person upon his account?

Mr. *Heald*.—It does not.

Mr. *Plumer*.—Though the letter P is not there, yet nevertheless it might be brought by some other person?

Mr. *Heald*.—That is possible.

Mr. *Whitbread*.—Whether, on taking that book into his hand, and reading the different entries, he would not know, according to the course of business, that entries so made as that is, were not made where persons paid any money to the credit of other persons?

Mr. *Heald*.—No; I cannot take upon myself to say that.

A *Lord*.—Whether you always ask the name of a person who comes with the money, desiring you to give credit to another?

Mr. *Heald*.—It is usual for us to ask, who are we to make it received of?—if they say of the person to whom we give credit, we make the entry as this is in my hand; if they say any other person, we put the name.

A *Lord*.—If the money had been received from any other person than Mr. Dundas, would you not in the course of business have given such other person a receipt for it?

Mr. *Heald*.—Yes; we usually do.

A *Lord*.—Is there any book or document in your custody in which such receipt is entered, and can be found?

Mr. *Heald*.—None.

A *Lord*.—Whether it is not the usual course, if a person brings money, and desires it to be entered, not to his own credit, but to the credit of another, to give that person a receipt for the money paid in?

Mr. *Heald*.—It is usually done.

A *Lord*.—Is it always done?

Mr. *Heald*.—No.

A *Lord*.—Was it done in this particular case?

Mr. *Heald*.—I cannot charge my memory, to say whether I gave a receipt or not.

A *Lord*.—When you give any receipt to a person who brings money to be entered, not to his own credit, but to the credit of some other, do you make any memorandum of a receipt so given?

Mr. *Heald*.—Sometimes we mark the letter R underneath it, sometimes not; it is not a general rule.

A *Lord*.—Whether it is not the constant custom of Messieurs Drummond, in the accounts with their customers, when any sum of money is paid in to the credit of their customers by another person, to give a receipt for that sum?



Mr. *Heald*.—Certainly it is.

A *Lord*.—When you render an account to any of your customers, and when that account contains credit to such customer for money paid in by another person, and not by himself, have you any waste-book, or other book from which that account so rendered that customer, is copied?

Mr. *Heald*.—It is posted into the ledger, which explains the entry in this book.

A *Lord*.—Have you got any ledger applicable to this particular transaction, so as to be able, by referring to that ledger, to ascertain whether or not the account of this particular customer was in any part for sums not paid in by himself but by another?

Mr. *Heald*.—I dare say we have.

A *Lord*.—Would the ledger furnish any light upon that subject?

Mr. *Heald*.—The ledger that alludes to this transaction will not—it will appear as if it were received from Mr. Dundas.

A *Lord*.—Would the ledger ascertain, whether this 1,000*l.* paid in to the credit of Mr. Dundas, was paid in by him, or by some other person on his account?

Mr. *Heald*.—It would appear by our ledger, as paid in by himself.

A *Lord*.—Supposing it had been paid in by another person, would a reference to the ledger show it was paid in by another, and not by himself?

Mr. *Heald*.—It will appear to be paid in by himself.

A *Lord*.—When you render an account to your customer, do you retain in your possession, in any book, any thing from which you can see what account you have rendered to your customer?

Mr. *Heald*.—Yes.

A *Lord*.—What is the name of that book?

Mr. *Heald*.—The Ledger.

A *Lord*.—By referring to that ledger, should you be able to ascertain, whether this sum of money which appears in the entry to the credit of Mr. Dundas, was in fact paid in by him, or by any other person?

Mr. *Heald*.—It would appear, in the ledger, as received from himself.

A *Lord*.—Whether in fact he paid it or not?

Mr. *Heald*.—Yes.

A *Lord*.—Looking at that book, you have said you cannot answer with certainty whether you received the money of Mr. Dundas or not; can you speak with more certainty, from the contents of any other book, than you can speak with, from the contents of that book?

Mr. *Heald*.—No.

A *Lord*.—Whether Mr. Douglas at any time ever paid any money to Mr. Drummond's, on account of Mr. Dundas?

Mr. *Heald*.—He has.

A *Lord*.—Can you state, from the entry now lying before you, the probable entry that will be found corresponding with this in the ledger?

Mr. *Heald*.—There will appear the date, the word received, and the sum 600*l.*

A *Lord*.—Will it appear from whom received?

Mr. *Heald*.—As from himself.

A *Lord*.—Is it customary for the customers at the house of Messieurs Drummonds, when they receive their account current from the banking-house, to sign that account?

Mr. *Heald*.—Yes, but not generally so.

A *Lord*.—Has any account current been rendered to Mr. Dundas, comprehending this period?

Mr. *Heald*.—I cannot answer; that is a book I have nothing to do with.

Mr. *Whitbread*.—We wish the witness to be asked, whether it was the custom for the customers of Messieurs Drummonds to keep banking-books?

Mr. *Heald*.—Some had books; some not.

Mr. *Whitbread*.—Do you know whether Mr. Dundas had a banking-book?

Mr. *Heald*.—I cannot answer that question.

A *Lord*.—Whether the books which are kept in your banking-house, containing the accounts of Mr. Dundas, have or not, from time to time, been settled by Mr. Dundas himself?

Mr. *Heald*.—I cannot answer that question.

[The witness was directed to withdraw.]

Then Mr. *Thomas Buckley*, was called in, and, being sworn, was examined as follows:

Mr. *Whitbread*.—Are you a clerk in the banking-house of Messieurs Drummond?

Mr. *Buckley*.—I am.

Mr. *Whitbread*.—Were you a clerk in that house, in the year 1782?

Mr. *Buckley*.—I was.

Mr. *Whitbread*.—Whether there are entries in that book you hold in your hand, in your hand-writing?

Mr. *Buckley*.—There are.

Mr. *Whitbread*.—What is that book?

Mr. *Buckley*.—A bank-book.

Mr. *Whitbread*.—Is there an entry there of the 29th of November 1782?

Mr. *Buckley*.—There is.

Mr. *Whitbread*.—Is there a sum entered in that book, of 1,000*l.* paid in, in a bank-note, on that day?

Mr. *Buckley*.—There are the particulars of a bank-note, K 212, A. C. 7th November, 1,000*l.*

Mr. *Whitbread*.—Is that entry in your own hand-writing?

Mr. *Buckley*.—It is.

Mr. *Whitbread*.—Does this note you now hold in your hand correspond with that entry?

Mr. *Buckley*.—I believe it does.

Mr. *Whitbread*.—Is it not the note?

Mr. *Buckley*.—I cannot say positively to that.

Mr. *Whitbread*.—Read the date of the note and the letter, and then read the entry.



Mr. Buckley.—It corresponds with the entry in the book, in the number, date, year and sum.

Mr. Whitbread.—The entry made in the book, and the notations upon the bank-note corresponding with it, I would ask whether the letters A. C. marked in the entry in that book are meant to correspond with the letters A. C. marked upon the bank-note itself?

Mr. Buckley.—I believe so.

Mr. Whitbread.—Look at that other book; do you know that to be a banking-book belonging to the banking-house of Messieurs Drummond?

Mr. Buckley.—I do.

Mr. Whitbread.—Is there an entry in that, of the bank-note you have in your hand?

Mr. Buckley.—There is.

Mr. Plumer.—Is that entry in your hand-writing?

Mr. Buckley.—It is not.

Mr. Whitbread.—Whether the entry in the witness's own hand-writing, in that book in Mr. Drummond's office, corresponds with another entry, made in another book, of that bank-note?

Mr. Buckley.—The letter, number, and sum correspond.

Mr. Whitbread.—And the date?

Mr. Buckley.—The date is not entered in the other.

Lord Chancellor.—What is that other book?

Mr. Buckley.—It is called the Bank Book; where the notes paid into the banking-house are usually entered, for the information of persons that may come to inquire after notes lost, stolen, or mislaid.

Lord Chancellor.—How do you describe that book, in which the entry in your own hand-writing is contained?

Mr. Buckley.—We call it the Bank Book; it is the book in which every note that comes into the house is entered in the evening.

Then Mr. Thomas Buckley was cross-examined as follows:

Mr. Plumer.—Whether, in all cases, the ledger kept by the banker is copied from the waste-book, and cannot be more correct than the waste-book itself?

Mr. Buckley.—The waste-book being the original entry, is the book always referred to; the cash-book is copied from the waste-book, and from the cash-book it is copied into the ledger.

Mr. Plumer.—Can the ledger be more particular with respect to the character or circumstances of any notes paid in, than the waste-book?

Mr. Buckley.—I should think not.

Lord Chancellor.—Would the waste-book, if it was referred to, give any more information upon this subject than the book before you does?

Mr. Buckley.—The waste-book is the only book where information can be had.

A Lord.—Is it not the practice to copy

every night from the waste-book into the ledger, in order to see that the accounts are correct?

Mr. Buckley.—They are copied in the course of the day into the cash-book, and posted in the course of the day into the ledger from the cash-book.

[The witness was directed to withdraw.]

Mr. Whitbread.—We offer the ledger of Messieurs Drummond, to show that the entry in that ledger corresponds with the entries in the other books, and to show that there is a difference in the entries in the ledger, as the witness has stated; there was generally a difference in the entries, when the money was paid by the person himself, or by other persons.

Then Mr. William Heald was again called in, and examined as follows:

Mr. Whitbread.—What is the book you have before you?

Mr. Heald.—The Ledger.

Mr. Whitbread.—Is that ledger your own hand-writing?

Mr. Heald.—No.

Mr. Whitbread.—In whose hand-writing is that ledger?

Mr. Heald.—Alexander Hope's.

Mr. Whitbread.—Is Alexander Hope alive or dead?

Mr. Heald.—Dead.

Mr. Whitbread.—Are you acquainted with his hand-writing?

Mr. Heald.—Yes.

Mr. Whitbread.—Is the entry on the 29th of November, which you will see there, to the credit of the right honourable Henry Dundas, in the hand-writing of Mr. Hope?

Mr. Heald.—It is.

Mr. Plumer.—Surely the honourable manager will not offer this as evidence.

Lord Chancellor.—It cannot, in my opinion, add to the strength of the evidence.

[The witness was directed to withdraw.]

Then Mr. Thomas Rippon was again called in, and examined, as follows:

Mr. Whitbread.—Are you an officer of the Bank of England?

Mr. Rippon.—I am.

Mr. Whitbread.—In what office?

Mr. Rippon.—In the cashier's office at present.

Mr. Whitbread.—How long have you been in the Bank of England?

Mr. Rippon.—Ever since the year 1782.

Mr. Whitbread.—Were you then conversant with the mode, in which the Bank conducted that part of their business, which relates to the issue of bank-notes?

Mr. Rippon.—I was.

Mr. Whitbread.—How were the bank-notes, at that time issued by the Bank of England, distinguished from each other?



Mr. Rippon.—They were distinguished by being made out in different books, and the letter of these books was marked on each note.

Mr. Whitbread.—Did it ever happen that any notes bearing the same letter, the same date, and the same number, were issued on the same day?

Mr. Rippon.—Not on the same day.

Mr. Whitbread.—Whether any note, exactly corresponding with that note you have in your hand, in letter, date, number, and day, can have been in circulation in the kingdom?

Mr. Rippon.—Only one of the same kind on the same day can be.

Mr. Whitbread.—And must that have been the one;—do you swear that there could have been but one of that description?

Mr. Rippon.—I have no doubt of it.

[The witness was directed to withdraw.]

Adjourned to the Chamber of Parliament.

#### FOURTH DAY.

Friday, May 2, 1806.

The Lords and others came from the Chamber of Parliament into Westminster-hall, in the same order as on the first day of the trial.

Lord Chancellor.—Gentlemen, Managers for the Commons, you may now proceed with your evidence, and the Lords will be pleased to give their attention.

Mr. Whitbread.—My lords, the managers for the House of Commons propose to call further evidence upon the subject of Mr. Drummond's books, and lord Melville's connexion with that house—they will first call Mr. Oliver.

Then Mr. Thomas Oliver was called in, and being sworn, was examined as follows:

Mr. Whitbread.—Are you now a clerk in the banking-house of Messieurs Drummond?

Mr. Oliver.—Yes.

Mr. Whitbread.—Were you in that situation in the year 1782?

Mr. Oliver.—I was.

Mr. Whitbread.—Was it the custom at that time to give the customers of that house banking-books?

Mr. Oliver.—Whenever it was required; a great many had, and some had not.

Mr. Whitbread.—Do you know whether lord Melville had an account at their house, in that year?

Mr. Oliver.—Yes.

Mr. Whitbread.—Had he a banking-book?

Mr. Oliver.—It appears that he had for some years.

Mr. Whitbread.—My lords, a notice has been given for the production of that banking-book.

Mr. Plumer.—Did you ever see this banking-book?

Mr. Oliver.—I have; because I have marked in the ledger, that the book agreed at a certain period.

Mr. Whitbread.—I shall call Mr. Joseph Kaye, to prove that notice had been given to lord Melville's solicitor to produce the book.

Mr. Plumer.—My lords, we shall not put the managers to the proof (which I understand the honourable manager is now proposing to give) of notice having been given to the noble defendant's solicitor, to produce the book of which the honourable manager is now speaking. I admit that notice distinctly; at the same time, I can with great truth assure your lordships, from the noble defendant himself, and all who have searched among his papers, that there is not the least trace of it, and he has not any such book in his possession.

Mr. Whitbread.—Then I propose, that the ledger of Messieurs Drummond shall be produced, from whence the entry in this banking-book is a transcript. Turn to the entry in the ledger of the 10th August, 1782.

Mr. Plumer.—I wish first to ask the witness whether that entry is made by himself?

Mr. Oliver.—It is not.

Lord Chancellor.—Describe what that book is?

Mr. Oliver.—It is a ledger for the whole year, 1782.

Mr. Whitbread.—Are the banking-books of the different customers of the house of Messieurs Drummond transcribed from their accounts in that ledger, or other ledgers like that?

Mr. Oliver.—They are always a transcript, an exact copy.

Mr. Whitbread.—Of course lord Melville's account was transcribed in the same manner as other customer's accounts?

Mr. Oliver.—It was.

Mr. Whitbread.—Have you examined lord Melville's account with the account in that ledger?

Mr. Oliver.—I have.

Mr. Whitbread.—Read an entry in Mr. Dundas's account of the 10th August, 1782.

Mr. Oliver.—“10th August, 1782, by cash received of Andrew Douglas, esq. 1,000*l*.”

Mr. Whitbread.—Read the entry of the 4th of October, 1782.

Mr. Oliver.—“October 4th, ditto, 200*l*. 5*s*. 2*d*.”

Mr. Whitbread.—Read the entry of the 15th of November, 1782.

Mr. Oliver.—“The 15th of November, of ditto, 232*l*. 14*s*. 8*d*.”

Mr. Whitbread.—Read another entry of the 29th November, 1782: this entry was read yesterday out of another book, which was sworn to as being in the hand-writing of the witness then before your lordships.

Mr. Oliver.—“November 29th, received 600*l*.”

Mr. Whitbread.—Read the entry of the 19th of December.



Mr. Oliver.—“December 19th, received of Andrew Douglas, 1,000*l*.”

Mr. Whitbread.—Are those all the entries, from the commencement of the account up to this period, on the credit side of this account?

Mr. Oliver.—They are.

Mr. Whitbread.—My lords, I wish now to go on to the year 1783, and that an entry of the 21st of March be now read.—Is that a ledger of the same description as the one you had in your hand just now?

Mr. Oliver.—Of the same description.

Mr. Plumer.—Are these entries in your own hand-writing?

Mr. Oliver.—No, they are not.

Mr. Plumer.—Have you examined them with the waste-book, or with my lord Melville's banking-book?

Mr. Oliver.—It appears that I have, by marking that the book agrees at the end of the year.

Mr. Plumer.—Was that examination in this case, and in the case of the last book, with a banking-book, delivered to the noble defendant, or an examination with the waste-book?

Mr. Oliver.—An examination with the banking-book of lord Melville. The banking-book is a copy of this without making a reference at the time to the waste-book.

Mr. Plumer.—Whether you can now say, upon your oath, that you have yourself compared the banking-book with that ledger, so as to be sure that the one is a copy of the other?

Mr. Oliver.—If it is not a true transcript, it must be an error in copying.

Mr. Plumer.—Can you recollect who it was that wrote out the banking-book for the defendant?

Mr. Oliver.—It appears that I have done it myself, from the mark here.

Mr. Plumer.—Am I to understand that you mean to say, that the banking-book you delivered to the defendant was a correct copy of the book before you?

Lord Chancellor.—Can you say that upon your oath?

Mr. Oliver.—It is impossible to be more particular in the examination, it is done in the usual way.

Mr. Plumer.—I do not object to the reading of it.

Mr. Whitbread.—I beg an entry of the 21st March, 1783, in the account of the right honourable Henry Dundas, to be read again.

Mr. Oliver.—“March 21st.—By cash received of Andrew Douglas, 1,000*l*.”

Mr. Whitbread.—Read the entry of the 7th April.

Mr. Oliver.—“The 7th April, received 500*l*.”

A Lord.—Is there no name?

Mr. Oliver.—No name.

Mr. Whitbread.—I beg to know—which is a painful thing to ask—but it is, in order to bring this matter to a point, indispensably ne-

cessary,—what was the balance of the account of lord Melville on the morning of the 29th November, 1782, before the receipts and payments of the day began?

Mr. Oliver.—The balance on the morning of the 29th November, appears to be 92*l*. 19*s*. 10*d*. in favour of lord Melville.

Lord Chancellor.—Was that balance before the accounts opened that day?

Mr. Oliver.—Yes, before any thing came to the account that day.

Mr. Whitbread.—Go on to the 21st of March, 1783, and state what the balance of lord Melville's account was on that day before the payment of the 1,000*l*?

Mr. Oliver.—The balance on the morning of the 21st of March, appears to be 12*l*. 19*s*. 10*d*. in lord Melville's favour.

Mr. Whitbread.—Had lord Melville the benefit of all those credits that are so entered in that book?

Mr. Oliver.—Undoubtedly.

Then Mr. Thomas Oliver was cross-examined as follows:

Mr. Plumer.—Can you recollect whether the banker's-book, when you saw it, was in the possession of Mr. Douglas, or of whom else?

Mr. Oliver.—I cannot.

Mr. Plumer.—At what place did you see it?

Mr. Oliver.—At Mr. Drummond's banking-house.

Mr. Plumer.—Did you ever see it in lord Melville's, or in Mr. Douglas's possession?

Mr. Oliver.—Never in either of their possessions that I can recollect. It is impossible at this distance of time to recollect precisely.

Mr. Plumer.—The balances you have ascertained now, are they balances that appear to be struck in the book, or balances you have now made by calculation?

Mr. Oliver.—The balances are not struck. I have summed up the account on each side, and that appears to be the balance to that period.

A Lord.—You have stated two different sorts of receipts on the credit of lord Melville. Some of the articles are entered as being paid by Andrew Douglas, esq., and others merely stating them as received. Can you, upon your oath, say by whom the latter articles were paid?

Mr. Oliver.—No, I cannot; for I was not in the department to receive money.

Mr. Whitbread.—Whether it was usual to deliver the banking-books to the customers of the house?

Mr. Oliver.—To the customers of the house, if they came themselves; but gentlemen more frequently sent than came themselves.

Mr. Whitbread.—Was it the custom to deliver the banking-book to whatever persons came for it?

Mr. Oliver.—Whoever was sent for the book always had it.



*Lord Chancellor.*—In the years 1782 and 1783, had Mr. Andrew Douglas any private account of his own with Messieurs Drummond?

*Mr. Oliver.*—I will turn to the ledger and see; but I do not recollect any. His name does not appear in the alphabet.

*Lord Chancellor.*—If he had had one, would it not have appeared in that ledger?

*Mr. Oliver.*—Undoubtedly.

*A Lord.*—Did you ever see, or have you an opportunity of knowing, in what manner lord Melville settled his private account with Messieurs Drummond, when these balances were struck?

*Mr. Oliver.*—There does not seem to be any settlement from the commencement.

*Mr. Whitbread.*—Has a copy of lord Melville's account ever been delivered to him?

*Mr. Oliver.*—There was an account made out lately, but I did not see it.

*A Lord.*—Have you said that you were more in the course of sending the banking-book open or sealed up?

*Mr. Oliver.*—We do it both ways; if a person brings it open, it is generally returned the same way; but it is generally sealed.

*A Lord.*—Were the payments made to lord Melville's credit by order, or by check?

*Mr. Oliver.*—By common drafts, generally payable to some person, or payable to bearer.

*A Lord.*—Does it appear that they were ever paid to lord Melville in person?

*Mr. Oliver.*—I do not see any entry to that effect as far as I have examined.

*Mr. Whitbread.*—I wish this paper to be put into the hand of the witness; it is a draft of lord Melville upon the house of Messieurs Drummond. Do you know that hand-writing?

*Mr. Oliver.*—I knew the signature of Mr. Dundas at that time; but I never saw him write.

*Mr. Plumer.*—If it is any paper signed by the noble defendant, he will admit it directly.

*Mr. Whitbread.*—Would you have answered any draft upon lord Melville's account not signed by himself?

*Mr. Oliver.*—Not without we had had an order for that purpose.

*Mr. Whitbread.*—Did you receive any such order?

*Mr. Oliver.*—I cannot answer to that.

*Mr. Plumer.*—I admit it to be signed by lord Melville.

Then the draft was read, and is as follows:

"London the 8th November 1782 Pay to William Bell or order Fifty Pounds Sterling to the account of Henry Dundas.—To Messrs. Robert and Henry Drummond and Company Charing Cross."

*A Lord.*—Are these drafts still in the possession of Mr. Drummond?

*Mr. Oliver.*—They are here in court.

*A Lord.*—By whom are these drafts signed? Are any of them signed by lord Melville?

*Mr. Oliver.*—I believe the whole of them are, unless there are particular orders to draw; I have not examined them lately.

[The witness was directed to withdraw.]

Then Mr. William Heald was again called in, and examined as follows:

*Mr. Whitbread.*—What book have you now before you?

*Mr. Heald.*—The waste-book of Mr. Drummond's house.

*Mr. Whitbread.*—Read the entry of the 29th of November, 1782.

*Mr. Heald.*—"Received of the right honourable Henry Dundas, £.1,000."

*Mr. Whitbread.*—Read the entry of March the 21st, 1783, in the waste-book.

*Mr. Heald.*—"Received of Andrew Douglas, esq. a bank-note of £.800, and a bank-note of £.200—for which I give credit to Henry Dundas in £.1,000."

*Mr. Whitbread.*—The entry of the 29th of November is made in the ledger *received* where the name of Henry Dundas, without any addition to it, appears in the waste-book; and the entry of the 21st of March, 1783, where the name of Douglas appears in the entry, is a special entry, purporting that it was received of Mr. Douglas, on account of the right hon. Henry Dundas. Read the entry of April 7th, 1783.

*Mr. Heald.*—"Received of the right honourable Henry Dundas, 500*l.* for which I give him credit."

*Mr. Whitbread.*—In that entry of the 7th April, 1783, it is, "Received of Henry Dundas," without any addition. The entry in the ledger has only the word "Received."

Then Mr. William Heald was cross-examined, as follows:

*Mr. Plumer.*—Does the last entry you have read specify the manner in which it was received, whether by bank-notes, or in cash, or in what way?

*Mr. Heald.*—By a bank-note, value 500*l.*

*Mr. Plumer.*—Are you to be understood now to say what you did yesterday say, that though the entry purports to be a receipt from the right honourable Henry Dundas, yet that it might be so entered, though received from any body else on his account?

*Mr. Heald.*—It might be from some other person.

*Mr. Whitbread.*—Can you account for the difference in the ledger, when compared with the waste-book?

*Mr. Heald.*—I do not know of any difference.

*Mr. Whitbread.*—If there is no difference, whether *received*, in the ledger, does not mean it was received from the person himself, or herself, to whom that credit is carried?

*Mr. Heald.*—It does,



Mr. *Whitbread*.---Is it customary, in the house of Messieurs Drummond, to charge interest upon their over-payments, to their customers?

Mr. *Heald*.---It is.

Mr. *Whitbread*.---Was such charge ever made, or would it have been ever made, to lord Melville, provided his account had been over drawn, in the same way as it would have been made to other customers?

Mr. *Heald*.---I believe it would.

Mr. *Whitbread*.---Did it ever happen that any such charge was made in the account of Messieurs Drummond?

Mr. *Heald*.---I cannot answer; that is not in my department.

Mr. *Plumer*.---You are asked with respect to a comparison between the ledger and the waste-book, whether the ledger must not necessarily be general as the waste-book is, and therefore a receipt from Mr. Dundas be in the same terms as it is in the waste-book?

Mr. *Heald*.---It would.

Mr. *Whitbread*.---On referring to the ledger, it will appear that the word *received* is in the entry, and not *Dundas*.

A *Lord*.---If I paid a sum of money into Mr. Drummond's bank, upon the account of Mr. Dundas, or any other individual, declining to mention to the Bank my name, whether they would not enter it as received of Mr. Dundas, or such other individual?

Mr. *Heald*.---I should ask the gentleman, of whom I was to make that received: if he said of Mr. Dundas himself, I should have then entered in Mr. Dundas's name only.

A *Lord*.---Should you have made the entry as a payment from Mr. Dundas himself, in all cases in which another person paying the money directed you to enter it?

Mr. *Heald*.---Agreeably to the direction given me, I should have made the entry.

Mr. *Whitbread*.---In such a case as that just now stated by the noble lord, to which you have given that direct answer, should you not have made some private mark, by which you would have known that there had been some other person there, and not Mr. Dundas?

Mr. *Heald*.---That might have been omitted by me.

Mr. *Whitbread*.---Is there any mark prescribed in the usual form by the House, that they may be informed of such payment having been so made, when the name of the person is not delivered in?

Mr. *Heald*.---None.

Mr. *Whitbread*.---Is there not a certain mark or memorandum, made by the letter *P*, inserted in the books upon such occasions?

Mr. *Heald*.---Sometimes I do, but not generally.

Mr. *Whitbread*.---What is the interpretation of that letter *P*?

Mr. *Heald*.---That it was by another person.

A *Lord*.---Do you recollect any such instance as a person coming to the house of

Messieurs Drummond, to make a payment of a thousand pounds on account of Mr. Dundas, and desiring his name might not be inserted as the person making the payment, but that it should be entered to Mr. Dundas?

Mr. *Heald*.---It is impossible for me to recollect such a circumstance.

A *Lord*.---Whether you have any recollection whatever, of what did pass, when any one of these notes was paid in?

Mr. *Heald*.---I have not.

A *Lord*.---Do you know of your own knowledge that all these notes were carried to the credit of Mr. Dundas, and to no other person?

Mr. *Heald*.---I do not know that: the last witness could inform the House.

[The witness was directed to withdraw.]

Mr. *Whitbread*.---The managers wish to ask a question of Mr. Oliver.

Then Mr. *Thomas Oliver* was again called in, and examined as follows:

Mr. *Whitbread*.---In case over payments were made to any of the customers of the house of Messieurs Drummond, was interest always charged?

Mr. *Oliver*.---Generally charged.

Mr. *Whitbread*.---Was lord Melville any exception to that rule?

Mr. *Oliver*.---No.

Mr. *Whitbread*.---Was he ever charged interest for over payment?

Mr. *Oliver*.---No, he was charged regularly for money at the end of the year.

A *Lord*.---Is it not the practice at Messieurs Drummond's house, when any payment whatever is made by another person, to give notice to the customer of such payment?

Mr. *Oliver*.---It is a regular rule, when one person pays upon another's account, to give notice of it the next morning.

Then Mr. *Thomas Oliver* was cross-examined as follows:

Mr. *Plumer*.---What was the amount of the interest charged upon the noble defendant from January 1786 to May 1800?

Mr. *Oliver*.---I have not got the particulars, but by referring to the ledger I can collect it.

Mr. *Plumer*.---You will refer to the books for that purpose, and prepare yourself to give an account on a future day.

A *Lord*.---When a payment is made in Mr. Drummond's house, by an agent on account of his principal, is it customary to give notice to such principal of the payment of his agent?

Mr. *Oliver*.---It is a general custom, unless it is particularly desired not to be.

A *Lord*.---Who is it that gives that notice next day?

Mr. *Oliver*.---The clerk whose business it is to write the letters.

A *Lord*.---How does the clerk collect the knowledge that it was paid by a third party?



Mr. *Oliver*.—He collects that knowledge from the entry in the cash-book.

A *Lord*.—What mark in the entry communicates that knowledge to the clerk?

Mr. *Oliver*.—If Mr. Douglas, for instance, paid in a sum of money on Mr. Dundas's account, it is stated "Henry Dundas of Mr. Douglas."

A *Lord*.—Supposing the person does not choose to give his name, he says, I bring such a sum for Mr. Dundas?

Mr. *Oliver*.—I enter it in his name, and give him credit for it, without specifying who he was.

A *Lord*.—Am I to understand that in every case, where a person does not give his name, there is no notice given?

Mr. *Oliver*.—Certainly; there is no notice at all where the person paying does not give in his name.

A *Lord*.—I understand you to have said, that if the money is paid in without the person giving his name, no notice is given of that payment.

Mr. *Oliver*.—Certainly not, when it appears only in the person's name on whose account it is received.

A *Lord*.—Then how is the person to whose credit it is received, supposed ever to learn that it has been sent to that house?

Mr. *Oliver*.—The supposition is, that it has been sent immediately from that person by a messenger.

A *Lord*.—I understand you infer then, that it is supposed to be by the party himself?

Mr. *Oliver*.—By the party himself.

A *Lord*.—Is it the usage of the house, whatever the fact be, to consider the person paying, who does not give his name, as paying on account of the individual to whose account the money is to be placed?

Mr. *Oliver*.—Certainly.

A *Lord*.—Leaving them to settle the matter between them as they think proper?

Mr. *Oliver*.—Certainly.

A *Lord*.—Then where a person pays a sum of money without giving his name, though it is carried to his credit, may it not frequently happen, that the person to whose account it is carried, knows nothing of the fact till his book is sent to your house to be settled?

Mr. *Oliver*.—It may so happen.

[The witness was directed to withdraw.]

Then Mr. *William Mac George* was called in, and being sworn, was examined as follows:

Mr. *Whitbread*.—Are you a clerk in the house of Messieurs Drummond?

Mr. *Mac George*.—I was in the year 1785.

Mr. *Whitbread*.—Were you so in the year 1782?

Mr. *Mac George*.—I was.

Mr. *Whitbread*.—Did you copy the letters that were sent by that house to their different customers?

Mr. *Mac George*.—It was my custom, at an

early period of my going to the house, to copy the letters; afterwards I wrote them.

Mr. *Whitbread*.—What is that book you have in your hand?

Mr. *Mac George*.—The Letter-book.

Mr. *Whitbread*.—Refer to a letter written in June 1785, which purports to be written to the right honourable Henry Dundas. Is that letter in your own hand-writing?

Mr. *Mac George*.—It is.

Mr. *Whitbread*.—Notice has been served upon the noble defendant, to produce the original of that letter; we can prove it if necessary.

Mr. *Plumer*.—I do not dispute the notice; but we have no such letter.

Then the copy of the letter was read from the book, and is as follows:

"Messieurs Drummond present their compliments to Mr. Dundas, and take the liberty to acquaint him his account stands 2,953*l.* 13*s.* 10*d.* over-paid, by which they apprehend there must be some mistake, or that some money has not been paid in that he expected, and therefore think it right to acquaint him of it.

"23rd June, 1785."

[The witness was directed to withdraw.]

Then Mr. *Thomas Oliver* was again called in, and examined as follows:

Mr. *Whitbread*.—Was interest in fact charged upon that specific over-payment?

Mr. *Oliver*.—The interest was charged from the time the account became over-paid.

[The witness was directed to withdraw.]

Then Mr. *William Mac George* was again called in, and examined as follows:

A *Lord*.—Did lord Melville return any answer to that letter?

Mr. *Mac George*.—Not that I know of.

[The witness was directed to withdraw.]

Mr. *Giles*.—My lords, I am now going to produce an account signed by the noble defendant himself; the object of the evidence is to show the application of some of those notes composing the 5,000*l.* which were received by Mr. Douglas at the Exchequer, on the 6th of November, 1782. I will show the paper to the counsel for the defendant.

Mr. *Plumer* admitted it.

Mr. *Giles*.—It is an account between his lordship and a Mr. Newbiggen, who lived in Scotland; it contains an item of a bill drawn by Mr. Newbiggen upon, and payable by lord Melville, in favour of sir William Forbes.

Mr. *Plumer*.—The honourable and learned manager will show where that paper came from.

Mr. *Giles*.—We do not conceive we are under the necessity of doing that.



Mr. *Plumer*.—I certainly cannot insist that the honourable manager should do so.

The same was read, and is as follows:

“Dr. ——— James Newbiggen, to the right honourable lord advocate.

“1782, Nov. 16.—To d<sup>o</sup>. Sir W. Forbes, for my bill on the lord adv. 1,000*l*.”

Mr. *Giles*.—My lords, I shall now proceed to show that that bill came to the hands of Messieurs Moffatt and Kensington, bankers, in London; and that it was paid by one of those bank-notes which we proved yesterday to have been received at the Exchequer, by Mr. Douglas. The noble defendant has had notice to produce the bill of Mr. Newbiggen.

[The witness was directed to withdraw.]

Then Mr. *George Scott* was called in, and, being sworn, was examined as follows:

Mr. *Giles*.—Were you clerk to Messieurs Moffatt and Kensington in the month of November, 1782?

Mr. *Scott*.—I was.

Mr. *Giles*.—What is the book you now hold in your hand; and is there any entry in it in your hand-writing?

Mr. *Scott*.—It is called the Goldsmiths' Book; it is a book which contains the particulars of all bank-notes and drafts that come into the house.

Mr. *Giles*.—Is there any entry in your hand-writing by which it appears that a bank-note for 1,000*l*. K 12, came into the house in November, 1782?

Mr. *Scott*.—There is K 12, the 24th October.

Mr. *Plumer*.—Are you the person who actually received the bank-note?

Mr. *Scott*.—I am not.

Mr. *Plumer*.—From what did you make this entry?

Mr. *Scott*.—From the bank-note.

Mr. *Plumer*.—But by whom it was brought to you, you do not know?

Mr. *Scott*.—It was received.

Mr. *Giles*.—Is the bank-note you now hold in your hand, the note from which you made that entry?

Mr. *Scott*.—I have no doubt of it.

Mr. *Giles*.—Does that entry made by you enable you to say on what account that bank-note was paid to the house?

Mr. *Scott*.—It was received for a bill upon the lord advocate of Scotland.

Mr. *Plumer*.—My lords, this shows the impropriety of proceeding in the examination till the point had been ascertained. I understand the witness to say, he was not the person who received the note, or knew upon what account, or by whom it was paid; he only copies into the book, a bank-note, which is brought to him by somebody; but upon what account, or by whom that is paid, he does not know.

Lord Chancellor.—Do you know any thing

of this bank-note, but from what appears upon the note itself?

Mr. *Scott*.—From the memorandum upon the back of it, it was received in payment of a draft upon the lord advocate of Scotland.

Lord Chancellor.—Have you any knowledge whom that bank-note came from, except from the hand-writing upon the back of it?

Mr. *Scott*.—Not any.

Mr. *Whitbread*.—Having brought the examinations down to the 7th of April, 1783; and having been called by the counsel on the other side, to depose upon oath, as to a part of the articles on this impeachment; I beg to appear in the character of a witness, and upon my oath to declare, that I heard lord Melville declare on the 11th of June, 1805, that during the paymastership of Mr. Douglas, he became possessed of the public money, to the amount of 10,000*l*. or thereabouts; and that he further declared that he would not reveal the application of that money, being impelled to do so from motives of public duty, private honour, and personal convenience.

Lord Chancellor.—Was that answer so given by lord Melville committed to writing?

Mr. *Whitbread*.—It was not committed to writing, I heard lord Melville say it, and it was merely to save the time of the Court, as I have been already sworn, that I swear it. Many other witnesses, who heard it, might be called to prove it.

Mr. *Plumer*.—The honourable manager will excuse me for putting a question to him upon the subject on which he has given evidence. How long is it since the honourable manager heard this declaration made?

Mr. *Whitbread*.—I stated the date, on the 11th of June, 1805.

Mr. *Plumer*.—Did the honourable manager make any note at the time of the words that were spoken?

Mr. *Whitbread*.—I did not commit it to writing at the time, but I remember the words, upon my oath.

Mr. *Plumer*.—Did not the noble defendant at the same time accompany it with a positive declaration that he had not converted any part of it to his own profit or emolument?

Mr. *Whitbread*.—I believe he did.

Mr. *Plumer*.—Have you the least doubt that he did so?

Mr. *Whitbread*.—As to the express terms I do not remember them. Those that I have spoken are the words that made the greatest impression upon me: and I shall never forget them. The import of other parts of this speech certainly was, that he had not applied it to any private advantage or emolument.

Mr. *Plumer*.—In substance it was to that effect?

Mr. *Whitbread*.—I have said so.

Mr. *Plumer*.—The honourable manager has no doubt it was?

Mr. *Whitbread*.—I have said so.

Mr. *Plumer*.—I have no other question.

Mr. *Whitbread*.—If there is no other ques-



tion to be put to me in the character of a witness, I now propose in the character of a manager, to call Mr. George Swaffield.

Then *George Swaffield*, esq., was called in, and being sworn, was examined as follows:

*Mr. Plumer*.—Before this witness is examined, I hope the honourable manager will pardon me if I take the liberty of saying, that I do not at present recollect any other question I wish to put to the honourable manager; but as the honourable manager has been kind enough to appear in the character of a witness, I hope he will not object to any question we may hereafter put to him.

*Mr. Whitbread*.—As far as concerns myself, I shall certainly have no objection to the learned counsel cross-examining me at any future time: but on the part of any other witness, I must object to his being put, through any lapse of mine, into any situation in which he ought not to be placed. I may rely, I am sure, with the utmost security upon the discretion and honour of the learned counsel, that he would not induce me, unlearned as I am, to answer any question which he would not put to any other witness.

*Mr. Plumer*.—No question of the nature suggested will ever be put to the honourable manager.

*Mr. Whitbread*.—I speak not only as to the nature of the question, but as to the time of putting it also.

*Mr. Whitbread*.—Mr. Swaffield are you not now an officer in the Navy pay-office?

*Mr. Swaffield*.—I am.

*Mr. Whitbread*.—How many years have you been in the Navy pay-office?

*Mr. Swaffield*.—Sixty years.

*Mr. Whitbread*.—In the early part of your duty in the Navy pay-office, do you recollect that there was such a thing as an iron chest kept for the public accommodation of the office?

*Mr. Swaffield*.—There has always been an iron chest in the strong room, as we call it.

*Mr. Whitbread*.—To what use was that iron chest applied?

*Mr. Swaffield*.—To lock up the public money.

*Mr. Whitbread*.—I have no further question to ask the witness at present; we shall have to call him again.

*Mr. Adam*.—Then we will reserve our cross-examination till he is called again.

*Mr. Whitbread*.—We wish now to put in lord Melville's examination before the commissioners of naval inquiry, which was put in upon oath.

Then *William Mackworth Praed*, sergeant at law, was called in, and being sworn, was examined as follows:

*Mr. Whitbread*.—What have you in your hand?

*Mr. Sergeant Praed*.—I have the examination of the right honourable lord viscount Mel-

ville, which was taken before the commissioners of naval inquiry, on the 5th November, 1804.

*Mr. Whitbread*.—Is it signed by lord Melville?

*Mr. Sergeant Praed*.—It is.

*Mr. Whitbread*.—Did lord Melville depose upon oath to that evidence?

*Mr. Sergeant Praed*.—Lord Melville was sworn, and deposed upon oath to the contents of this paper.

*Mr. Whitbread*.—We put in the paper, and at some time of the trial undoubtedly the whole will be read to your lordships; but unless the counsel wish to have it read now, I should point your lordships to only one question and answer.

Then *William Mackworth Praed*, sergeant at law, was cross-examined as follows:

*Mr. Plumer*.—Before lord Melville was examined before the commissioners of naval inquiry, had any notice been given to his lordship of the points upon which it was intended to examine him?

*Mr. Sergeant Praed*.—Certainly not, any further than that a letter had been written before to the noble lord, with respect to some part of the subject upon which we were then making our inquiry, and to which letter an answer had been received. I only speak of this from having seen the letter in the office, and the answer of his lordship to it.

*Mr. Plumer*.—Then, excepting that letter which, I believe, desired a production of the accounts, no intimation whatever was given to the noble defendant, of the points upon which it was intended to interrogate him?

*Mr. Sergeant Praed*.—I think I may say certainly not otherwise than as the precept, to which perhaps reference should be had, will show. Perhaps, I ought rather to refer to that altogether. I believe it required nothing more than the noble lord's attendance any day that would be convenient to him. I am not quite sure whether it was a precept or a letter.

*Mr. Whitbread*.—Were the questions submitted to lord Melville in writing?

*Mr. Sergeant Praed*.—The questions were written down, and then read over by the secretary to lord Melville, and his answers taken down by the secretary, who sat at his right hand.

*Mr. Whitbread*.—Had lord Melville an opportunity of seeing the depositions he had given?

*Mr. Sergeant Praed*.—The course has always been, and was observed with regard to lord Melville, that the question is first written down, the answer taken, the answer read, the question and answer then read over, and at the close of the examination the whole examination is read over again, and then the examinant is desired to attend at some future day to hear the examination read over, or on the same day, if it is a short examination, and



then sign it. That course was observed by lord Melville; the questions were read over distinctly, and the answers also. The whole was read over on the first day, and on the subsequent day, when it was in the form in which I now hold it. The whole was read over to lord Melville by the secretary, one of the commissioners holding the fair copy, and after that had been so read lord Melville signed it.

Mr. *Whitbread*.—Had the persons opportunity given to them of altering or correcting the answers they had given before their subsequent signing it?

Mr. Sergeant *Praed*.—The witnesses have been at all times permitted to make such alterations as they thought proper on the first day of examination, but upon the second day no alteration has been permitted to be made in the transcript; but if any thing suggested itself to the witness by way of alteration or correction, it has been written down upon the examination so transcribed, and then those alterations have been signed by the party so proposing them, and also by the commissioners then present.

Mr. *Whitbread*.—Did lord Melville avail himself of the latitude granted by the naval commissioners to amend his deposition?

Mr. Sergeant *Praed*.—He did not. If he had, it would appear upon this paper.

Mr. *Whitbread*.—Whether he availed himself of the opportunity given of correcting his deposition before it was signed?

Mr. Sergeant *Praed*.—Certainly upon the first day the noble lord availed himself of shaping the answers in such manner as appeared eligible to himself. I do not recollect that there was any thing in particular that he desired to make any alteration in; he did not in fact make any alteration in the second examination as transcribed here, but in the course of the first examination, the turn of expression was sometimes changed by the noble lord, as he dictated to the secretary; but I am not aware that there is any material alteration from the original impression of his mind as he delivered it to us.

Mr. *Whitbread*.—Had the noble lord the same opportunities given him to make any alteration he might think fit which were given to other witnesses?

Mr. Sergeant *Praed*.—Undoubtedly he had.

Mr. *Plumer*.—Whether the answers that were taken down from the noble lord, and that appear in that paper, were the answers that he gave *instantly*, immediately upon the question being put to him, of which he had had no previous notice?

Mr. Sergeant *Praed*.—Undoubtedly they were.

Mr. *Plumer*.—Do you in fact recollect that the answer first given to any question put at any subsequent time, was corrected, even in the expression or words of it?

Mr. Sergeant *Praed*.—I can take upon myself to swear, that in the course of dictating to the secretary, some words were altered in

the phraseology, but I am not aware of any alteration in any thing material.

Mr. *Plumer*.—But do you remember, in point of fact, that any alteration of any kind did take place?

Mr. Sergeant *Praed*.—No otherwise than as the phraseology might be altered in the course of dictating to the secretary.

Mr. *Plumer*.—After it had been taken down, was any alteration made in any answer?

Mr. Sergeant *Praed*.—After it had been transcribed, I am not aware that any alteration was made.

Mr. *Plumer*.—I wish to ask whether the questions which were put to my lord Melville had been written down prior to his lordship's attendance?

Mr. Sergeant *Praed*.—I cannot take upon me to say with positiveness, that every question which was put to lord Melville was written down; I rather think that they all had been written down, but as it frequently occurs in the course of examination that some answer leads to a further question, it is impossible for me to say now, but that some such question might have been introduced, in consequence of a preceding question, and the answer of lord Melville.

Mr. *Plumer*.—How long before this examination had the questions been written down?

Mr. Sergeant *Praed*.—I cannot take upon me to say how long they had been prepared.

Mr. *Plumer*.—Was it the day or the week before?

Mr. Sergeant *Praed*.—I cannot speak as to that point, because our course has been to meet in the morning prior to the attendance of a witness, and read over the questions together; but with regard to framing those questions I cannot say, not having framed those questions myself, nor heard from any of the commissioners when they were prepared—at what time they were prepared.

Mr. *Plumer*.—Had you seen them at the preceding meeting?

Mr. Sergeant *Praed*.—I cannot say that I had: I can speak positively that I saw them the same morning lord Melville attended, but cannot speak to having seen them at any prior time.

A *Lord*.—Did lord Melville, when he attended upon the commissioners, express a wish to have further time for consideration of the answer he was to give to the questions?

Mr. Sergeant *Praed*.—By no means; no such application was made.

A *Lord*.—Was lord Melville allowed to see the questions proposed to him, between the first and the second examination?

Mr. Sergeant *Praed*.—Certainly not, nor was any application, that I am aware of, made for that purpose.

A *Lord*.—Whether, according to the course of your proceedings, you ever do grant time, unless it is asked?

Mr. Sergeant *Praed*.—We have. In some



cases of this sort some objection has been made, concerning the propriety of a person's disclosing matters, conceived to be committed to him in confidence. There was an instance in the case of Mr. Antrobus, we gave him time to advise with counsel in order to be satisfied whether we had, or not, a right to enforce an answer to the question; and another instance with regard to Mr. Trotter; he requested time for a similar purpose, and we granted it.

*A Lord.*—What interval was there between the first and second examination?

*Mr. Sergeant Praed.*—There was not a second examination, it was a second attendance merely for the purpose of signing the first examination; I think it was an interval of three or four days, but I am not sure.

*A Lord.*—Had lord Melville an opportunity of seeing his answers during that interval?

*Mr. Sergeant Praed.*—If it is meant to ask, whether any application was made for the purpose, I do not know of any; and if lord Melville had made an application I think it could not be granted, and for this reason, if the commissioners had been sitting and lord Melville had come, I have no doubt he would have been permitted to see them; if not, the secretary would no doubt have refused him, and referred him to the board.

*A Lord.*—Whether you ever granted time to persons who were to be examined upon any other grounds, than where it happened that there was a doubt about your own right, to put the questions?

*Mr. Sergeant Praed.*—I cannot answer it with certainty; it does not occur to me at present that instances of that sort of wish for delay have occurred; but I can say that in the present case no such delay was asked for.

*A Lord.*—After the first attendance, was the witness furnished with a copy of what he deposed before the second attendance?

*Mr. Sergeant Praed.*—No; it has been applied for, but has been constantly refused; and the reason of the board I apprehend to be this, that if we had granted such copies, the witnesses would have opportunities of talking with other people upon the subject of their examination, and might feel impressions which might lead to an alteration of their evidence, not arising from their own knowledge, but from communication with others.

*A Lord.*—Would the witnesses examined before you have been allowed to take copies of the answers they had given to the questions?

*Mr. Sergeant Praed.*—The general rule has been not to permit that practice. In some cases, persons have desired to take down a particular question with a view to give a more satisfactory answer afterwards; but, in general, it has been refused, and for the very same reason for which we have refused to grant copies.

*A Lord.*—Was it known to lord Melville or the commissioners, before the examination of lord Melville took place, that the examination would involve his private affairs?

*Mr. Sergeant Praed.*—No such intimation was given on the part of the commissioners; what was in the breast of the noble lord himself, with respect to the tendency of this examination, it is impossible for me to say.

*A Lord.*—Was it known to the commissioners, before the examination, that the examination would involve lord Melville's private affairs? or did that only come out in the course of the examination?

*Mr. Sergeant Praed.*—It was certainly known to the commissioners, that the questions which they should put to his lordship, would tend to disclose some pecuniary concerns of his lordship, or would oblige his lordship to rest upon the defence which was taken, namely, that he did not choose to disclose certain circumstances, on account of the clause in the statute; but as the questions went to discover from his lordship what use had been made of the money, and whether that use had been converted to his own advantage, necessarily these questions must lead to the disclosure of some things which might be of a private nature, inasmuch as the advantage made of the money, if any such had taken place, would be private.

*A Lord.*—Had any of the witnesses who were examined on the first day, and had given in their answers, an opportunity given to them of examining those answers they had so given, before the second day, when they were called upon to sign it?

*Mr. Sergeant Praed.*—I have no recollection of any such application having been made; and have said before, that if any such application had been made, I think it would have been refused by the secretary, if any such application had been made to him; whatever might have been said by the board, if an application had been made to them.

*A Lord.*—Was any such notice given to the party examined on the first day that he might have an opportunity of having recourse to his own answers?

*Mr. Sergeant Praed.*—The usual course has been, before the evidence taken down has been read over for the last time on the first day, to call the attention of the examinant to the answers he has given, and to request, that if he saw any thing which he wished to alter, that he would do it. I will not charge my memory positively, that that took place in the case of lord Melville, but I should rather think that it did.

*A Lord.*—The question is, whether the secretary gave notice to the examinant the first day, that he might have that opportunity on the second day?

*Mr. Sergeant Praed.*—No; the secretary has never given any such notice that I know of.

*A Lord.*—Is that paper an exact copy of the original examination of lord Melville?

*Mr. Sergeant Praed.*—I have no doubt it is an exact copy; for the original evidence, as taken upon the first day, was in the hand of



one of the members of the board while this was read over by the secretary, and upon all occasions the transcript has been so compared since I have been a member of that board.

*A Lord.*—Whether you can recollect any instance in which the fair copy of the examination was not an exact copy of the original rough draft, taken at the time of the examination?

*Mr. Sergeant Praed.*—I apprehend I am aware of the allusion; I think it alludes to an examination at the first institution of the board, when I was not a member of it; there was one occasion in print perfectly well known, in which there had been something introduced by one of the clerks, different from the original evidence; it was observed when it was read over, and checked in the way I have described, and it was altered according to the wish of the examinant, before he signed it.

*A Lord.*—Whether we are to conclude from the evidence you have given, that the noble viscount, previous to his first attendance, had no intimation from the commissioners, either of the specific questions to be put, or the general scope and purpose of the examination?

*Mr. Sergeant Praed.*—He had certainly no intimation of the sort from the commissioners, but we had been for some time in the course of the examination into the mode of conducting the business of the treasurer of the navy; and Mr. Trotter had attended us frequently, and the noble lord had had that letter written to him, to which we received the answer I before mentioned; but, for greater certainty I apprehend, the better course will be to refer to the letter which was written to the noble lord, requiring his attendance.

*A Lord.*—I understand that, after the first examination, the noble viscount was not allowed to revise and re-consider the answers he had given?

*Mr. Sergeant Praed.*—That is rather an assumption than a question: I ask your lordship's pardon. It is stated that the noble lord was not allowed to revise the questions and his answers. I have already said, and again repeat, that no application, to my knowledge, was ever made by the noble lord to revise them; on the contrary, if the noble lord had applied to revise them, I rather think, and for myself can speak, he would have been permitted, during the sitting of the board to revise them, and prior to the transcript being made, which was signed; I can speak for myself, that I think he would have been permitted to have made the alterations, if any had been proposed.

Then the witness delivered in a paper, which was read, and is as follows:

“The examination of the right honourable lord viscount Melville, taken upon oath the 5th November 1804.

“It appearing by accounts laid before

us, that the sums standing in your name, as treasurer of the navy, at the Bank, at the following periods, were less than the sums with which you stood charged, exclusive of the money advanced to your sub-accountants, and that the deficiencies were as follows, viz.

|                      |   |        |    |    |
|----------------------|---|--------|----|----|
| “ 31st December 1786 | - | 56,000 | 0  | 0  |
| _____ 1787           | - | 53,100 | 0  | 0  |
| _____ 1788           | - | 48,600 | 0  | 0  |
| _____ 1789           | - | 53,800 | 0  | 0  |
| _____ 1791           | - | 19,988 | 9  | 8  |
| _____ 1792           | - | 26,476 | 19 | 8  |
| _____ 1793           | - | 27,025 | 17 | 9  |
| _____ 1794           | - | 28,758 | 7  | 9  |
| _____ 1795           | - | 30,316 | 16 | 1  |
| _____ 1796           | - | 75,413 | 5  | 0  |
| _____ 1797           | - | 58,640 | 14 | 10 |
| _____ 1798           | - | 54,140 | 15 | 0  |
| _____ 1799           | - | 54,140 | 15 | 0  |

“To what cause are such deficiencies to be attributed?—Although I take it for granted the sums are stated by the question accurately, I could not on memory state that they are so. I desired Mr. Trotter, so far as I was concerned, to give you every information he could; and it was only in consequence of a conversation with him, immediately after the receipt of your letter to me, of date the 26th of June, that I learnt from the manner he kept his private accounts, it was impossible for him to give me the accurate information I required: the same reasons render it impossible for me to give you an answer to the question you put. I am aware that I am not bound to answer it under the provision of the act establishing this commission; but I should not have dwelt on that objection, if there had been nothing but personal considerations to operate against my doing so; but for the reasons I hinted to you in my letter of the 30th June last, as I am not bound, so I would not feel myself warranted to give the explanations which your question points at.

“Upon what ground does your lordship decline answering that question?—Upon the ground that I have already stated, under the 5th clause of the act 43rd Geo. 3, cap. 16.

“Was any part of such sums in your hands?—They certainly came into my hands, but did not remain there.

“Did Mr. Alexander Trotter, while paymaster of the navy, lay out or apply, or cause to be laid out or applied, any of the money issued for carrying on the current service of the navy since 1st January 1786, for your benefit or advantage?—From the manner in which Mr. Trotter kept my accounts it is impossible for me to answer that question, and I object to answer this question upon the ground I have stated in answer to the first question.



"Did you direct or authorize him to do so?—To the best of my recollection I never did.

"Did you, between 1st January 1786, and 31st May 1800, derive any profit or advantage from the use or employment of money issued for carrying on the current service of the navy, under the act 25th Geo. 3, cap. 31?—The same reasons which induced me to make the answer I have done to the first question, must induce me to repeat the same answer to this.

"Does your lordship object to answer this question under the provision of the 5th section of the Act 43rd Geo. 3, cap. 16?—I do, and upon the grounds stated in the answer to my first question.

"During the time you acted as treasurer of the navy, between 1st January 1786, and 31st May 1800, was any of the money applicable to naval services advanced by you, or by your direction, for any other public service than that of the navy?—I decline to answer that question, under the provisions of the 5th section of the act 43rd Geo. 3, cap. 16.

"Was any money issued for carrying on the current service of the navy, applied by your lordship, or by your direction, for any other public service than that of the navy, with the knowledge or consent of the navy board?—No, certainly not.

"Was there any official note or record made of the money issued for carrying on the current service of the navy having been advanced by your direction, for any other public purposes than that of the navy, or of the repayment of such money?—No; there was certainly no official note.

"Did you authorize the paymaster, in or about the year 1786, to draw the money applicable to naval services, from the Bank, and lodge it in the hands of a private banker?—I cannot precisely fix the time, but I am certain that I did permit Mr. Trotter to lodge any money drawn from the Bank for public purposes in his private banker's hands, during the period it was not demanded to the purposes for which it was drawn.

"What circumstances induced you to give such permission to the paymaster?—An opinion, in which I still adhere, that if the whole monies necessarily drawn from the Bank in pursuance of orders from the competent boards, were lodged in the hands of a respectable banker, under the control of the paymaster of the navy, that it would add more facility to the conduct of the business of the office, in the multitude of small payments to be made, than if the money were deposited, according to the constitution of the office, in an iron chest.

I likewise had it in contemplation, that in the receipt of these various small payments, made to such a variety of persons, they would be less liable to be imposed upon by that mode of transacting the business, than if they were each to receive drafts for such small sums upon the Bank, at such a distance from the office, after its removal to Somerset-place.

"As the paymaster of the navy does not disburse any part of the public money, except for the payment of Exchequer fees and other contingencies, does your lordship think it necessary, that the paymaster should have in the iron chest, or at a private banker's, any of the money issued for carrying on the current service of the navy?—I do not think it necessary; but for the reasons I have given, I think it expedient. The whole money drawn from the Bank, and placed in the hands of the sub-accountants, pass through the hands of the paymaster of the navy; but though this is my opinion, I know many very competent persons entertain a different opinion.

"Did you give permission to the paymaster to withdraw the money from the Bank, and lodge it in the hands of a private banker, with a view to his deriving any advantage or emolument therefrom?—If it is meant to ask me, whether I ever gave any direct authority to the paymaster to use the money in the manner above-mentioned, I should certainly answer, no; but I have no hesitation in saying, that I believed and understood he did, and never prohibited him from doing so. And I believe it was so understood by others, at different times, when the establishment of the Navy-pay-office was under consideration, when certainly no competent provision was made for the person exercising that trust of great extent and responsibility.

"As the money applicable to naval services was directed to be lodged in the Bank, by the act of 25th Geo. 3rd, cap. 31, and not to be drawn from thence, without specifying the services for which it is drawn; by what authority did you give permission to the paymaster of the navy to draw the money out of the Bank, and lodge it in the hands of private bankers?—I take it for granted it always was drawn under the heads of service pointed out in the act of parliament; and when I talk of permission, I mean it under the explanation contained in the answer to a former question, in which I suppose the money drawn under competent authority.

"Do you know of any instance of a treasurer of the navy having made good any loss which had arisen from over-payments, or other misapplications of the public money?—No, I do not.



"Did you derive any profit or advantage from the use or employment of money issued for carrying on the current service of the navy, between 19th August, 1782, and 30th April, 1783; or between 1st February, 1784, and 31st December, 1785, during which periods you held the office of treasurer of the navy?—I decline answering this question, under the 5th clause of the act 43rd Geo. 3rd, cap. 16, and for the reasons given in my first answer.

"Did you consider the addition granted by the king's sign manual, upon your appointment to the office of treasurer of the navy, making your salary 4,000*l.* a year clear of all deductions, to be in full satisfaction for all wages, fees, and other profits and emoluments, previously enjoyed by former treasurers?—Certainly I did, with the exception of coals, candles, and some such small contingencies.

"When was it first discovered that Mr. Jellicoe was deficient in the balance of public money, with which he stood charged as deputy paymaster of the navy?—I do not recollect the precise period, but the first thing that gave me any suspicion that there was a danger of deficiency, was, by observing in the reports occasionally made to me, that his balance remained stationary, so far at least as never to get below a sum I think of between twenty and thirty thousand pounds; this led me to have a particular conversation with him, when he confessed to me, that for a considerable number of years he had been embarrassed, from some advance or engagements he had come under with a Mr. Cort; that from the high opinion I had of him in consequence of the character of former treasurers of the navy, and my own observation, I had no reason to doubt the fidelity of his representation, and it was my belief, that if he had lived to superintend the business himself, and to bring the profits of the patent Mr. Cort had obtained to their proper bearing, that the loss might have been repaired. Upon this, however, I do not pretend to give any positive opinion, as it appeared, after his death that his embarrassment had existed, and a balance became due at least as early as 1782.

"How many years before the death of Mr. Jellicoe was it, that you suspected he was deficient in his balance?—I cannot mention the precise time, but it was certainly more than one or two years.

"Was any inquiry made, upon the discovery, into the real state of his balance?—Certainly, it was minutely inquired into.

"Does it any where appear what was the exact state of his deficiency at that

time?—I cannot state it from memory, but I dare say it does appear.

"MELVILLE."

"C. V. M. POLE.

"EWAN LAW.

"JOHN FORD.

"HENRY NICHOLLS.

"WM. MACKWORTH PRAED."

Mr. *Whitbread*.—We now wish that the letter of lord Melville to the naval commissioners, dated 30th June, 1804, be read.

Mr. *Plumer*.—Would it not be better first to read the letter to which this is an answer?

Mr. *Whitbread*.—We have not got that letter here; we have no objection to reading it when it arrives. The date of the examination just now read, is the 5th of November, 1804; the date of the letter about to be read is the 30th of June, 1804.

Then the letter was delivered in and read, and is as follows:

"Wimbledon, 30th June, 1804.

"(Received 2nd July.)—(Read 2nd.)

"Treasurer's Balances,

"No. 38.

"Gentlemen;

"I have received your requisition, of date the 26th instant. It is impossible for me to furnish you with the account you ask. It is more than four years since I left the office of treasurer of the navy, and at the period of doing so, having accounted for every sum imprested into my hands, I transferred the whole existing balance to the account of my successor. From that time I never considered any one paper or voucher that remained in my hands as of the smallest use to myself or any other person, and consequently being often in the practice, since I retired to Scotland, of employing occasionally some time in assorting my papers, and destroying those that were useless, I am satisfied there does not exist any one material by which I could make up such an account as you specify. But, independently of that circumstance, I think it right to remind you, that during a great part of the time I was treasurer of the navy, I held other very confidential situations in government, and was intimately connected with others. So situated, I did not decline giving occasional accommodation, from the funds in the treasurer's hands, to other services not connected with my official situation as treasurer of the navy. If I had materials to make up such an account as you require, I could not do it without disclosing delicate and confidential transactions of government, which my duty to the public must have restrained me from



revealing. I have the honour to be,

"Gentlemen,

"Your most obedient humble Servant,

"MELVILLE."

"To the Commissioners of

"Naval Inquiry."

Mr. Plumer.—Your lordships will have observed, that this letter is the answer to a letter which had been written by the commissioners to lord Melville. The honourable managers, I am persuaded, and your lordships will have no objection, that when the original letter is produced, it may take its place before this, in order that the letter may be intelligible.

Mr. Whitbread.—Certainly, that letter having been read, which was dated on the 30th of June 1804, and lord Melville's deposition having been read, which was dated on the 5th of November 1804, it will be proper that a letter of the 28th of March 1805, to the naval commissioners, should, in justice to lord Melville, also be read.

Then the said letter was read, and is as follows:

"Admiralty, 28th March, 1805.

"(Received 29th).—(Read 29th.)

"Gentlemen;

"Having read your Tenth Report, and observing particularly the following paragraph, in the 141st page:

'However the apprehension of disclosing delicate and confidential transactions of government might operate with lord Melville, in withholding information respecting advances to other departments; we do not perceive how that apprehension can at all account for his refusing to state, whether he derived any profit or advantage from the use or employment of money issued for the services of the navy. If his lordship had received into his hands such monies as were advanced by him to other departments, and had replaced them as soon as they were repaid, he could not have derived any profit or advantage from such transactions, however repugnant they might be to the provisions of the legislature for the safe custody of the public money.'

"I think it necessary to state the following observations, in order to place in their just view the grounds on which I declined answering your questions, and which you appear not to have accurately understood.

"When you first called upon me for information, I stated to you, that I had not materials on which I could frame such an account as you required me at that time to prepare; and, in a communication with Mr. Trotter, before my examination on the 5th November last, I

learnt, for the first time, that in the accounts which he had kept respecting my private concerns, he had so blended his own private monies with what he had in his hands of public money, that it was impossible for him to ascertain with precision, whether the advances which he had occasion to make to me, in the course of his running private account with me, were made from the one or from the other of the aggregate sums, which constituted his balance with the house of Messieurs Coutts.

"This circumstance, which, I understood, Mr. Trotter had himself distinctly communicated to you, made it impossible for me to return any other answer than I did to the general question which you put to me, 'Whether Mr. Trotter had applied any of the money issued for carrying on the current service of the navy, for my benefit or advantage.' And to this circumstance I uniformly referred in my answers to other questions respecting the manner in which Mr. Trotter applied the money in his hands.

"When you put the question to me, 'Whether I did direct or authorize Mr. Trotter to lay out or apply, or cause to be laid out or applied, any of the money issued for carrying on the current service of the navy, to my benefit or advantage?' my answer was, 'To the best of my recollection I never did.' That answer I now repeat.

"Had you proceeded to inquire whether I had ever any understanding, expressed or implied, with Mr. Trotter respecting any participation of advantages derived from the custody of the public money? or whether I at any time knowingly derived any advantage to myself from any advances of public money?—I should have had no hesitation in declaring, as I now do declare, that there never was any such understanding, nor any thing like it, between Mr. Trotter and myself; that I never knowingly derived any such advantage; and that whatever emolument accrued to Mr. Trotter, in the conduct of the pecuniary concerns of the office, was, so far as I am informed, exclusively his own.

"With respect to any advances which Mr. Trotter might make on my private account, I considered myself as debtor to him alone, and as standing, with regard to them, in no other predicament than I should have done with any other man of business, who might be in occasional advance to me, in the general management of my concerns entrusted to him.

"It is impossible for me to ascertain, from any documents or vouchers in my hands, or now existing, what the extent of these advances may have been at any particular period. The accounts which



you have inserted in your report, I never saw, till I saw them in the report itself: they are no accounts of mine, nor am I a party to them. They contain a variety of sums, issued nominally to me, which never came into my hands; and they give no credit for the various sums received by Mr. Trotter, on my private account, from my salary as treasurer of the navy, and from other sources of income, of which he was in the receipt. Nor do they take any notice of the securities of which he was in possession, for the repayment of any balance at any time due to him from my private funds.

"With respect to the sums of naval money advanced to me, and applied to other services, I do not feel it necessary to make any additional observations, except to declare that all those sums were returned to the fund from which they were taken, having in no instance been withdrawn from it for any purpose of private emolument or advantage.

"Before I conclude, I wish to correct an inaccuracy, which I observe in one part of my evidence.

"In Appendix, No. 7, page 192, the question is put to me—'Did you derive any profit or advantage from the use or employment of public money, issued for carrying on the current service of the navy, between the 19th of August 1782 and the 30th of April 1783, or between the 1st of February 1784 and the 31st of December 1785, during which periods you held the office of treasurer of the navy?'—which question I there answer by a reference to an answer given to a similar question put to me before.

"This answer is inaccurate, in so far as it contains a reference to Mr. Trotter's mode of blending his funds, in his private account with Messieurs Coutts.

"Mr. Trotter was not paymaster till the year 1786.

"The circumstances, therefore, relative to Mr. Trotter's account, which precluded my returning an answer to your former question, do not apply to the periods specified in that last mentioned.

"And I can therefore have no difficulty in declaring, that during those periods I did not derive any advantage from the use or employment of money issued for carrying on the service of the navy.

"Having stated these facts, it is almost unnecessary for me to add, that I am ready at any time to verify them by my oath.

"I am, gentlemen,

"Your most obedient

"Humble servant,

"MELVILLE."

"To the Commissioners  
of Naval Inquiry."

Mr. Whitbread.—A copy of the letter first written is now in court.

Mr. Plumer.—We have no objection to its being read from this book.

Then the following entry was read from a book, entitled, "Precept Book."

"To whom issued. Subject.

"Right Honourable Lord  
Viscount Melville.

"Requiring to be furnished with an account of monies (exclusive of your salary as treasurer of the navy) received by you, or any person on your account, or by your order, from the paymaster of the navy, between the 1st of July 1785, and 31st of December 1800, specifying the times when such monies were received, and also the times when, and the persons by whom; the same were returned to the Bank or the paymaster."

Mr. Sergeant *Praed*.—I believe there was no letter written to lord Melville; but that letter which was received by the board from lord Melville, of the 30th of June, was in consequence of that precept, of which the account has been read from the book. I am not aware of any letter.

Mr. Whitbread.—Was any note or letter sent to lord Melville, requiring his attendance?

Mr. Sergeant *Praed*.—I am not aware that there was any note or letter sent but the precept. Subsequent to that time there was a letter written to lord Melville, desiring him to appoint some time when it might be convenient for him to attend.

Mr. Plumer.—That is the letter which I desire to have read.

Mr. Whitbread.—This letter, which is about to be read, is the answer of the commissioners of Naval Inquiry to the last letter of lord Melville, dated 28th March 1805.

A Lord.—I desire to know what article the honourable managers are now upon?

Mr. Whitbread.—We are on the first and tenth articles. It was out of candour to the noble lord, that the whole of the evidence of lord Melville was read now; but we wish to point your lordships' attention only to that specific part which applies to the first and tenth articles.

Then the letter was delivered in and read, and is as follows:

"Great George-street

"My Lord, "2nd April, 1805.

"We have received your lordship's letter of the 28th of last month, by which you intimate that we appear not to have accurately understood the grounds on which you declined answering our questions, and submit to us some observations in order to place those grounds in their just view, and also express a wish, before you conclude, to correct an inaccuracy in



one part of your evidence, and a readiness to verify by your oath the facts stated in that letter. If it be the object of this communication, that we should again require your lordship's attendance, for the purpose of being examined touching these matters, and that we should make a supplemental report upon the result of that examination, and such other examinations as we might thereupon judge necessary, there can be no disinclination on our part (as far as we are concerned in the proceeding) to meet your lordship's wishes; but it appears to us that the inquiry, which is the subject of the tenth report, has attained that period, when it would not become us to adopt such a measure, merely upon the suggestion of any of the parties to whose conduct that report relates.

"We were occupied several months in investigating the mode of conducting the business of the office of treasurer of the navy. Those who were examined by us had the fullest opportunity of stating and explaining all things which related to the management of that department, or to the share which they respectively had in it, and of correcting, at any time during the progress of the inquiry, any mistakes which might inadvertently have been made. Our opinions and observations upon the irregularities and abuses which we discovered, were formed and drawn up with the utmost care and deliberation, and they are now submitted to the three branches of the legislature, as the act by which we are appointed requires. If it could be made to appear, upon a representation to them, that any thing has been omitted on our part, that any misunderstanding or error had occurred, and that a farther inquiry is adviseable, upon these or any other grounds, it would be for them to direct such farther inquiry, and to decide by whom, and in what manner it should be prosecuted; but, in the present circumstances, it appears to us, that we cannot, with propriety, resume it.

"We have the honour to be,

"My lord,

"Your lordship's

"Most obedient

"Humble servants,

"CH. M. POLE.

"EWAN LAW.

"JOHN FORD.

"HENRY NICHOLS.

"W. MACKWORTH PRAED.

"Right Honourable  
Lord Viscount Melville."

[The witness was directed to withdraw.]

Mr. Whitbread.—We wish now to call your lordships' recollection to the evidence of Mr. Swaffield, who has been in the Navy pay-office

for sixty years, that there was an iron chest kept for the public purposes of the office, in which cash was deposited. It is in the evidence of lord Melville, that an iron chest was a part of the constitution of the office; with that iron chest a public account was kept by Mr. Douglas, lord Melville's paymaster, which public account we now desire permission to put in.

Then Archibald Douglas, esq. was again called in, and examined as follows:

Mr. Whitbread.—Do you know the hand-writing in the book now before you?

Mr. Douglas.—Perfectly well.

Mr. Whitbread.—What does the book purport to be?

Mr. Douglas.—"The right honourable Henry Dundas, Treasurer of the Navy, his iron chest, in the Office Cash-room."

Mr. Whitbread.—Whose hand-writing is that?

Mr. Douglas.—It is the hand-writing of my late father, Andrew Douglas.

[The witness was directed to withdraw.]

Then John Winter, jun. esq. was again called in, and examined as follows:

Mr. Whitbread.—Do you know that book?

Mr. Winter.—I do.

Mr. Whitbread.—Has that book been in your possession for any time?

Mr. Winter.—It has been in my possession ever since I found it among the papers delivered, by the widow of the late Mr. Douglas, to the committee.

Mr. Whitbread.—Where were those contained?

Mr. Winter.—In a box of papers, in the house of Mrs. Douglas.

Mr. Whitbread.—Was it in the same box in which the banking books, produced yesterday, were found?

Mr. Winter.—Yes.

Mr. Whitbread.—Are you sure it was the very same box?

Mr. Winter.—I have no doubt about it.

[The witness was directed to withdraw.]

Mr. Whitbread.—My lords, we wish it to be read.

Mr. Plumer.—I can hardly suppose the honourable manager to be serious, in desiring any entry in that book to be read, or that he can have brought himself to believe that it is competent evidence to be submitted to any tribunal whatever.

The book in question is a private book of an individual deceased, found amongst his private papers in that box; which was kept in the attic story of his house, delivered to his representative, and by her delivered to the honourable manager who now produces it. It is as much a private document belonging to that individual, as any other paper he possessed. Being paymaster does not make all



the papers that an individual keeps for his own information to be evidence. And, my lords, I am quite at a loss to know what circumstance there is to discriminate the book in question from any other private books that gentleman possessed. Will its title differ it? The honourable manager has stated, that the Iron Chest Account did, in point of fact, exist. What evidence is there that any such account did, in point of fact, exist at this time? But suppose it did, what evidence is there to prove that this was that account? What evidence is there to prove that the noble defendant ever saw, heard of, or read one single item contained in that book? Then, my lords, on what possible principle is it, that a book, contained amongst the private papers of an individual, is to charge any body else after the death of that individual, in any court of law, civil or criminal? This is a proposition so perfectly clear, that I will not detain your lordships by arguing it any farther.

Mr. Adam.—My lords, I shall add but very few words to what my friend has said.

Your lordships will observe from the testimony of Mrs. Douglas, especially on her cross-examination, that this is a book which was kept in the private repository of an individual; that it came to her as executrix; that it has no official mark about it; that it is done completely behind the back of the defendant; and that to admit it would be admitting the memorandums of another person, in his private repositories, and in his private book, to be given in evidence to affect this party, when there is not the possibility of having any explanation given of this book, even if it were possible for your lordships to permit it to be given in evidence. Were the party alive who wrote it, it could not be considered in any respect whatever other than as a memorandum made at the time, to refresh his memory as to what was the transaction at the time; and it appears to me, that the mere statement of this question embraces the argument, and that it would be a waste of your lordships' time to add another word.

Mr. Giles.—My lords, the managers for the House of Commons do contend, before your lordships, that this book is admissible evidence upon the issue your lordships are trying. It is proved to have been found among the papers that were in the possession of Mrs. Douglas;—to have been found, not, as the learned counsel observes, in a private repository of her husband's papers, but to have been found in a box specially appropriated by him to keep the papers that related to the treasurerships of which he had been paymaster. It is found in company with the banking books your lordships received in evidence yesterday;—it is found in company with the other documents that relate to the treasurerships of lord Melville, of which Mr. Douglas was paymaster.

My lords, I beg your lordships to recollect who Mr. Douglas was. Mr. Douglas was the

appointed paymaster of lord Melville, and, in that character, was to have the receipt and distribution of all the money issued to him as treasurer of the navy. He was acting, your lordships must see by the evidence now before you, with the fullest power that a man in such a situation could act. By reference to the power of attorney read before your lordships yesterday, you will find that he had power “to transact, to do, perform, and execute all such matters and things as either “then or thereafter, in any manner should appertain to the duties of the office and place “of treasurer of the navy.” Having this full power, your lordships have in evidence that he acted under it. It has been proved, that on the 6th of November, 1782, Mr. Douglas received from the Exchequer, on account of lord Melville, then treasurer of the navy, 45,000*l.*; that he received on the 22nd of November in the same year, 50,000*l.*; that on the 19th of December, in the same year, he received 93,830*l.* 6*s.* 10*d.* It has been proved before your lordships, by the banking books of lord Melville (found in the same place of deposit), that of those sums Mr. Douglas, as paymaster of the navy, had deposited in the Bank, 40,000*l.* on the 6th of November, leaving a balance of 5,000*l.*; on the 22nd of November, 47,000*l.*, leaving 3,000*l.*; and on the 19th of December, 90,830*l.* 6*s.* 10*d.* leaving also a balance of 3,000*l.*, making together the sum of 11,000*l.* received at the Exchequer, but not placed in the Bank.

My lords, we produce this book to your lordships to show that he placed these sums, amounting to 11,000*l.*, in the Iron Chest. This account we now produce to your lordships, to show what the Iron Chest Account was, as we produced the banking book to your lordships, to show what the banking account was. Your lordships perceive, that by the constitution of the office, before the act passed in 1785, there was no impropriety in the treasurer of the navy keeping the money out of the Bank. He might keep it at the Bank, at the banker's, or in an iron chest; all that was required, after he received an additional salary in consideration of giving up other profits and emoluments, was, that he should not make use of the money for his private advantage. At that time the treasurer of the navy, or his paymaster for him, might, without breach of duty, detain money from the Bank. Your lordships have it in evidence that they did so,—that Mr. Douglas did detain on the 6th of November, 5,000*l.*; and on the other days 3,000*l.* each, making together 11,000*l.*—Mr. Douglas, as the paymaster of lord Melville might, without any impropriety, and according to the constitution of the office, deposit that money in the Iron Chest; and we shall prove, in point of fact, that he did so, by this account of lord Melville kept by his paymaster, as the banking books were kept by his paymaster; for when it is said that it does not appear that lord Melville ever read



any entry in this book, or ever saw it, I would ask, does it appear that lord Melville ever read or saw his banking book? Certainly not. This is an account kept by a person authorized by lord Melville to keep it: it is, therefore, lord Melville's account. It is not Mr. Douglas's but lord Melville's account of the appropriation of the money he received from the Exchequer, and which was not deposited at the Bank, but in an Iron Chest; and we produce it, in order to show the amount of the money deposited in the Iron Chest, and the manner in which it was used.

*Lord Chancellor.*—You have shown that there was an Iron Chest in which, from time to time, were deposited such sums of money as were not taken credit for at the Bank; and that when there was an Iron Chest to deposit such money in, it was the duty of the paymaster,—and not only his duty, but the uniform practice of the office at that time,—before the act of parliament, to keep an Iron Chest Account, which Iron Chest Account would comprehend in it all such sums as were lodged in that Iron Chest, as contra-distinguished from those sums which were paid into the Bank, to the credit of the treasurer of the navy; because it is proper we should know distinctly what the facts are.

*Mr. Giles.*—I apprehend that the facts your lordship now states have been proved by Mr. Swaffield; if your lordships think that fact is not sufficiently proved, we will give your lordships the evidence. I am contending that this account ought to be received in evidence upon the supposition of that being the fact.

*Lord Chancellor.*—You must show that this is a regular official book, not a book Mr. Douglas might have kept for his own private memorandums. You must establish, before you ask of us to look at it, that it is a regular official book kept by the representative of the treasurer of the navy in that office.

*Mr. Giles.*—That is the way in which I offer it; I consider it as much a regular account as the accounts of the money kept at the Bank, produced and read yesterday.

*Lord Chancellor.*—Who has ever seen that book as an existing book? or who knows (if that is not the identical book which existed at that time) that there was such an official book in the office at that time?

*Mr. Giles.*—I do not apprehend we can call before your lordships any witness who has seen this book; but we shall call a witness who will prove there was an Iron Chest in the office, which, according to the constitution of the office, was a place for depositing money; and then there must have been some account kept of the money there deposited, and we offer this as an account of the money so kept in that Iron Chest.

*Lord Chancellor.*—But though there must be an account kept of the money in that office chest, *non constat* that this is that account; and therefore I think your evidence is not yet sufficient.

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*Mr. Giles.*—I submit that this book—coming out of the custody of Mrs. Douglas,—found among the official papers of Mr. Douglas,—and not out of his private repository, but in a box containing papers relating to the treasurership of the navy,—imports that it is an official book kept by Mr. Douglas. We do not propose to read any entry in the book which relates to any private transaction of Mr. Douglas; we propose to read entries in the book which import there was so much money deposited in the Iron Chest. If it was an account current between lord Melville and Mr. Douglas, I should not propose to read it. But it is lord Melville's account current with the Iron Chest.

We will call Mr. Swaffield back, if your lordships please, to give a more particular account of the way in which money was kept in the Iron Chest.

*Lord Chancellor.*—For what purpose do you propose to produce this book?—Is it for any other purpose than to show that there was an Iron Chest deposited in the office of the treasurer of the navy, and that the paymaster in that office had a book in which he entered from time to time accounts of the sums so deposited in it?—Do you produce the book for any other purpose than that?

*Mr. Giles.*—We produce it for the purpose of showing that the money was deposited by the paymaster in the Iron Chest; that he kept an account of the money so deposited in the chest; and the effect that evidence is to have upon your lordships' mind and judgment must rest with the Court; but we produce it for the purpose of reading those entries.

*Mr. Plumer.*—The honourable manager has distinctly stated that he produces the book for the purpose of substantiating a fact, namely, That on such a day Mr. Douglas did, in fact, deposit a sum of money in the Iron Chest. I am sure the honourable manager would not wish to have the book presented to your lordships for any other purpose than that which he has distinctly stated.

Now with respect to the custody of this book, the place where it is found I submit renders it equivocal whether it was a public or private book, for it might be equally in his custody. The inference is, when found in private possession, that it is private property. Where was it found?—In that box.—If it was a public paper it ought to have been deposited in a public office; but it is the paper of a private individual, relative to a particular subject, and that is all that is proved. But your lordships are reminded of the company with which it is found, and the place in which it is found. Supposing there had been found a book in which Mr. Douglas had written a narrative of any money he had received and paid, would that be evidence?—Consider, my lords, the hardship of this being held to be evidence. This is now twenty-four years after the transaction—offered as evidence of a spe-



cific fact, when, if the witness were here, we might interrogate him to all the particulars explaining it. I am sure your lordships will see that this book has no one character of having ever been officially treated, and I will not trouble your lordships any further upon the subject.

Mr. *Giles*.—We are about to offer Mr. Swaffield to give an account of the Iron Chest, and to state what accounts were kept respecting it.

Then *George Swaffield*, esq. was again called in, and examined as follows:

Mr. *Giles*.—According to your recollection, prior to 1785, was there an Iron Chest for depositing cash in the office of the treasurer of the navy?

Mr. *Swaffield*.—There was.

Mr. *Giles*.—Was such money as was received at the Exchequer, and not put to the credit of the treasurer of the navy, deposited in the Iron Chest in the office?

Mr. *Swaffield*.—I can only say, that that Iron Chest was for the purpose of locking up the money.

Mr. *Giles*.—Do you know that, in the regular course of the office, there was any account kept of the money so deposited in that Iron Chest?

Mr. *Swaffield*.—I never saw such an account.

Mr. *Giles*.—Do you know by whom the money was so deposited in this Iron Chest?

Mr. *Swaffield*.—I believe the paymaster in general deposited his money there.

Lord Chancellor.—Do you know it?

Mr. *Swaffield*.—I do.

Lord Chancellor.—Do you know whether the money which was from time to time received at the Exchequer, or any part of it, was deposited in that Iron Chest?

Mr. *Swaffield*.—I do not.

[The witness was directed to withdraw.]

Mr. *Giles*.—It appears now, that the witness cannot state to your lordships, that he knew of any account being kept by the paymaster of the money deposited in this Iron Chest. But I contend that to make this account evidence, it is by no means necessary that we should show by other evidence that the paymaster was in the habit of keeping an account of the money so deposited in the Iron Chest; because as it was the duty of the paymaster, when he received the money at the Exchequer, to keep an account of the money so received, and also to keep an account of such part of that money as was deposited at the Bank, in the banking books; it follows of course that he ought equally to have kept an account of the remainder of the money deposited in the Iron Chest. This purports to be that account, that is, to be the account of the treasurer of the navy, of the money deposited by the paymaster in the Iron Chest. It is an account which of course from its nature must

be kept by the paymaster only, for his is the hand that deposited the money in the Iron Chest, and kept the key of the chest, and of course he is the only person who can know what money is there placed, and delivered out of it; and that which we tender now to your lordships is in the hand-writing of the paymaster, Mr. Douglas, in a book found in company with those books which contain the banking accounts, and is as much an account of money deposited by the paymaster in the Iron Chest, as the banking account is the account of money deposited in the Bank.

Other honourable managers will state their reasons more forcibly than I have done, but I contend this is evidence which ought to be received in this cause.

Mr. *Solicitor General*.—My lords, the learned counsel who has objected to this evidence, has introduced his objection, by telling your lordships, that he can hardly imagine the managers are serious in offering it. My lords, the managers, who conceive that they have imposed upon them a most serious and important duty, have too much respect for your lordships and too much respect for the body which they represent, to offer to your lordships any evidence that they do not conceive to be legal evidence, and proper to be received. My lords, it is under that impression that the evidence now tendered to your lordships is offered; and before I make the very few observations which I mean to make upon it, it may be proper for me to state to your lordships that we are in possession of evidence, and shall in a future stage of these proceedings prove that that which appears to be the balance due from lord Melville to the public, upon this Iron Chest account, as it is called, is a balance admitted and adopted by his lordship, and acted upon in all his subsequent proceedings. According to the course which we have taken, we could not prove that fact to your lordships before we tendered the evidence which is now in question. I take for granted, however, that your lordships will give us that credit which every court of justice in the kingdom is in the habit of giving to counsel, and will believe, that we are in possession of that evidence, which we undertake at a future stage of the cause to produce. I shall therefore consider this case as if we had established that fact, which we hereafter certainly shall establish, namely, that my lord Melville has admitted, and that his subsequent accounts proceed upon the admission, that he was indebted to the public at the period when this account ends in the sum of 7,600*l.*, the exact amount of the balance stated on the foot of this account. Taking that fact with the addition of the facts which I am about to bring to your lordships recollection, we contend that we have a right to have this evidence received.

The objections that have been made to it, have proceeded upon a supposition, that facts exist which are inconsistent, as we imagine,



with the evidence before your lordships; namely, that this book is a private book, found among the private papers of Mr. Douglas. Permit me to remind your lordships, that we have proved that Mr. Douglas was the paymaster for lord Melville; that he was authorized by a power of attorney from lord Melville to do all acts for him in the execution of his office; and that keeping the accounts of the treasurer of the navy is a part of the duty of the paymaster, the treasurer of the navy not himself receiving sums of money, and having indeed no accounts at all to keep. The paymaster's accounts are the treasurer of the navy's accounts. I am, indeed, not quite sure, that the character which we ascribe to the evidence we produce before your lordships is fully understood: we offer this account to your lordships as the account of lord Melville, a servant of the public, respecting the public money. We conceive that the paymaster's accounts are the treasurer's accounts; that the treasurer of the navy has no accounts but those of the paymaster; and if we are right in that (and we have certainly heard no suggestion to the contrary; we have proved the fact as far as our evidence has gone, and there is no evidence that the treasurer himself receives or pays any thing on the part of the public) then this is the account of the treasurer of the navy; it is his account of the public money, exclusive of that paid into the Bank. It is his account of the money kept in the Iron Chest belonging to the office. Upon these grounds, we submit that this is evidence which ought to be admitted.

*Lord Chancellor.*—I understand you to state, that lord Melville admitted a balance against himself, similar to the balance to be found in the book; but that does not go the length of proving, that lord Melville saw that book at any time.

*Mr. Solicitor General.*—No; what we say is, that lord Melville has admitted in his subsequent transactions, that that sum of 7,600*l.* was due from him to the public, due on the day on which the balance was struck in that account.

I ought to have made another observation, and that is, as to the purpose for which we produce this evidence. I am sure your lordships will be satisfied, that, in any thing which I, on behalf of the managers, offer to your lordships, it cannot be my intention, in the slightest degree, to show any disrespect to your lordships; but, my lords, the managers conceive that they are not bound to state to your lordships for what distinct purpose it is that they offer any evidence to your lordships, otherwise than that they offer it for the purpose of charging the defendant with the crimes imputed to him in the Articles of Impeachment. To no other extent do we conceive that we are bound to state to your lordships what our purpose is; and, least of all, do the managers conceive, that, by the admission,

of one single manager,—what has been misconceived to be the admission of one single manager,—that the evidence is produced for only one specified purpose—the managers will be bound to confine that evidence to such specified purpose.

*Mr. Sergeant Best.*—I will trouble your lordships with one or two observations.

It appears to me, that the objection proceeds upon the idea that your lordships are now to consider the effect of the evidence, rather than whether it is or not admissible. The effect will be matter of subsequent consideration by your lordships; the only point to which your attention should now be directed, is, whether or not it can be received. I submit, that upon every principle of evidence, it ought to be received. It has been said, this is a private paper. It has nothing of the character of a private paper; the person to whom it belongs, the place in which it was found, and the title of it, all conspire to show that it is not a private paper, but a paper of a public officer.

To see whether it is evidence or not, it is only necessary to look at the situation of Mr. Douglas. He was, to all intents and purposes, the treasurer of the navy; that is, he acted upon all occasions for the treasurer of the navy—he did the whole business for the treasurer of the navy, so holding himself out to the public; and, in that way, lord Melville was regarded by the public as responsible for his conduct; for the conduct of Mr. Douglas was that of the noble defendant. One of the duties of the treasurer of the navy, which duty is executed as all other duties are by the paymaster, is, that of keeping the Iron Chest. It is clear, without the assistance of evidence, that there must be some Account of the Iron Chest. It is impossible that the sums of money, which are, from time to time, taken out of the chest in which they are deposited, and applied to all the various purposes which the service of the navy requires, could be taken out, unless there was some account kept of the purposes for which they were taken out, and the manner in which the sums were replaced by other sums received from the Exchequer, which they must have been. The only person who could have kept that account, is the person who had the care of the chest, which must be Mr. Douglas.

This appears to be in the hand-writing of Mr. Douglas. The noble lord had given him the control and management of this Iron Chest. Will your lordships then refuse to look at any papers written by the person who had the management of this Iron Chest, and from whose accounts alone it is that your lordships can possibly see what sums were put into, and were taken out of, this Iron Chest? This was found in the same box with all the other official papers; and if the objection is good for any thing, the same objection applies to every paper found in that box. This account was found in the place where your lordships would



expect to find it, in the possession of that person whom the noble defendant appointed to have the management of his concerns. It appears to me impossible, that your lordships can refuse to admit it in evidence. Whether in the result this shall be brought home to the noble viscount, so as to criminate him, is another question. We offer it for the purpose of showing your lordships, that Mr. Douglas, being authorized by the noble viscount to manage this fund, did, in fact, manage it; that will not of itself establish criminality, unless we can superadd to it other evidence, for the purpose of showing that the noble viscount knew perfectly well the application which it appears Mr. Douglas made of this fund.

What is stated by my honourable colleague, is extremely strong. Your lordships will give us credit that we can offer other evidence upon this subject; we do not offer this as in itself sufficient evidence to bring the charge home to the noble viscount, but if we connect that other evidence with it which has been stated, then it brings it home completely to the noble viscount. However your lordships have not now to decide, what will be its effect, taken by itself or connected with other evidence;—but, the question is, whether your lordships will hear the account given by an officer appointed by the noble viscount, of that trust which the noble viscount committed to him.

Mr. Plumer.—My lords, if originally I presumed to express considerable doubt whether the honourable managers meant to press the reception of this evidence, I have with extreme concern and astonishment, observed not only that the honourable managers persevere in pressing the reception of it, but that the learned and honourable managers should still state *their* perseverance in pressing the reception of that evidence after what has passed respecting it. I did understand your lordships to have distinctly called upon them, for the purpose of authenticating the evidence in question, that they should, if they could, give it the character of an official paper. For that purpose Mr. Swaffield was again called into the box, in order to know whether a paper of this description had ever previously existed; whether it did belong (as they imagined) to the office, that the paymaster should have an account denominated the Iron Chest Account. And yet when their own witness, called again into the box, has negatived, after an experience of sixty years, the existence of an account of that sort, yet still, they again repeat to your lordships the arguments that this paper is to be considered as an official paper, belonging to an official man, and in that character to be presented.

My lords, the whole argument of both the honourable and learned managers is founded on a fallacy. It assumes facts in the cause. There is not one fact upon which they proceed, established by the evidence. It is not proved that this is any more than a private

document belonging to that individual. Does the circumstance of his having had a public office make every paper he kept public? Does it make every paper he kept relative to his office a public paper? Is every paper found in the custody of Mr. Douglas, to be evidence against all his superiors? Is it to be stated, that the papers kept by every subordinate officer are, after his death, to be evidence against his principal? We object to this paper as not being evidence to any purpose, because it has not that character which will make a paper of one man evidence against another. A written declaration whether in a book, or on a paper, of an individual deceased, with respect to what he did with public money after it came into his possession is no more than a verbal declaration. Suppose it had been a letter written by him found in this same box, would that letter have been evidence? Supposing it had been a memorandum of what he had done, would that be evidence? and how is this distinguished from a letter or memorandum? Is every declaration made by Mr. Douglas to be evidence against the noble defendant? I beg leave to refer to all those principles I troubled your lordships with upon a former occasion. They apply decisively to negative the reception of this evidence, this not having belonging to it any of those characters, that rendered it proper to receive the documents, which your lordships have before permitted to be given in evidence.

The honourable manager who spoke second, tells your lordships what evidence he shall hereafter give upon the subject. At present you must decide upon the admissibility of this book, by the evidence you have now before you. But, supposing you had the evidence that the honourable manager proposes to give, what is it but this—that lord Melville has admitted a certain balance, corresponding with the balance stated in this book? Does that make all the antecedent history, reducing the balance to that sum, evidence? What became of the original money received from the Exchequer before it was reduced to the balance, the noble defendant has finally admitted. What is the intermediate history of it, he has not admitted. How does the taking up a certain balance admit any thing respecting the mode in which the sum was reduced to that balance? I am persuaded your lordships will see that the proposed evidence can make no difference as to the admissibility of this book.

Another argument is this: the honourable and learned manager says, we denominate it the account of the treasurer. They have denominated it so, but have not in fact proved it to be so. If you had proved that the treasurer had ever seen or authenticated it as his account, then you would be fairly warranted in calling it his account; but will the honourable manager's declaration, that it is so, make it to be so? It is nothing more than an account in the hand-writing of the paymaster, and



found amongst the private papers of that individual. Unless, therefore, your lordships are prepared to say that every paper found in the possession of every public man, is therefore of itself to be evidence for every purpose, I submit that the present document does not stand distinguished by any one piece of evidence that has been produced, either to give it the character of an official paper, or to bring it home to the knowledge of the noble defendant within your lordships' bar; and, consequently, upon every principle applicable to the law of evidence, it is nothing but a written declaration, not upon oath, and consequently can never be received in any court of justice whatever.

Mr. Whitbread.—My lords, I contend for the right of the Commons to make farther observations. I do not mean to say that right is at all denied, but I stand in this particular situation;—there is on my left a great deal of legal knowledge and information, which has spoken to your lordships as the organ of the House of Commons. It has laid down before your lordships—and I am sure those learned persons would not lay down that which they did not believe to be law, or give me information which they thought false—that this book which is now offered to your lordships is legal evidence: on the other hand, there are learned persons, who are the defenders of lord Melville in this case, whose duty it is, as it has been stated by one of themselves, to prevent the introduction of any evidence before your lordships, which may affect him criminally;—not only has the learned gentleman asserted that such is the plan upon which he proceeds, but your lordships know, that from the commencement of this trial to the present time, they have objected to various papers being introduced before your lordships, which have been established as good evidence. Under these circumstances, can I hesitate for a moment to suppose, that the information which I receive from this side, is that which is really and truly the law? and that the evidence we propose to produce before your lordships is such as your lordships ought to accept?

Now, upon the common sense of the case, I may be allowed to say a few words; taking it for granted that the law is with us.—An account must be kept of the money in the Iron Chest—we can show your lordships that various deposits of money, to a large amount, in cash, were made in this Iron Chest;—that those deposits were from time to time increased; and is it possible that the person who so deposited that money, upon an increase taking place, should not enter, in some book or other, what was the amount of the money so put into the Iron Chest? On the other hand, when an escort was prepared to conduct the money to the out-ports, as can be proved to your lordships, there was money taken out of the chest;—then must there not have been an account kept of that? And who kept that account? Was it not a public account? Mr.

Douglas was the person who kept the account—and that is the account which we contend before your lordships ought to be received by this Court.

Then *George Swaffield*, esq. was again called in, and examined as follows:

*A Lord*.—Who kept the key of the Iron Chest?

Mr. *Swaffield*.—The paymaster had always those keys in his possession.

[The witness was directed to withdraw.]

*Lord Chancellor*.—Unless any noble lord shall think that this matter ought to be farther considered in the Chamber of Parliament, I will deliver my opinion.

I am of opinion, this entry in the book ought not to be received. I am persuaded, that the honourable managers offered it to the Court from a sense of duty and justice; and I persuade myself that every one of your lordships feels, as I do, the greatest possible regard for their dignity and learning; but it is the office and duty of the House, as a court of justice, to pronounce upon the legality of the evidence which is offered to it; and I am anxious, in the few words I mean to deliver, to make it manifest that the House has administered, as it always will administer, consistent justice; and, that this evidence, now rejected, may not appear to have received any sanction from the principles upon which the evidence yesterday was received. When Mr. Andrew Douglas was shown to have acted under a power of attorney, proceeding from lord Melville,—when he received money, and gave his certificate of that receipt at the Exchequer,—when it appeared that he could not have received that money under any other authority or sanction, and that the certificate he gave, was the universal and public course by which the receipt of such money was to be manifested:—These facts, so combined, were received by the House, as sufficient proof that such public money was issued from the Exchequer, and received by the person having a power of attorney, authorising him to receive it. But it was at the same time expressly declared, that it only proved that fact; and the House have not forgotten (what has been just now stated) the abundant difference between the fact, and the effect of it after it is carried forward by other evidence. But this is a book which cannot be received on any principle of justice, because it could only be offered as an official document—as a book in a public office, in which the person acting there under the authority of lord Melville, kept a specific account; and if it had been a book receiving from the evidence that character, although you might not have been able to establish that lord Melville had actual access to it, yet access to it must then have been presumed, from the nature of his office, and it would have been evidence to be read against him; not to prove any application by lord Melville of any money



found in that book, but to show that in fact such an account had been kept by his deputy, of money for which he was civilly responsible as a public accountant.

If indeed it could have been shown that lord Melville had seen the book, and had adopted the balance which is to be found upon the face of it, and that evidence had been given in the first instance; then, whether the book had been public or private, his lordship's adoption of its contents as truth, would have rendered it evidence against his lordship. But the honourable managers did not profess to be possessed of any such proof, but only that the noble lord had admitted a balance, similar to that which the House would have found recorded in the book, if it had been received. I am, therefore, most clearly of opinion, that this book is not admissible, and cannot be read.

Mr. Giles.—My lords, Mr. Dodd, the witness whom I called some time ago, and who was not then attending, is now come; and, with your lordships' leave, we will pursue the inquiry which his absence interrupted. Your lordships will recollect it related to a bill of one thousand pounds, drawn by Mr. Newbigging, on lord Melville, in favour of sir William Forbes and Co., which found its way into the house of Moffatt and Kensington, bankers, in London; Mr. Dodd was a clerk in that house.

Then Mr. Thomas Dodd was called in, and being sworn, was examined as follows:

Mr. Giles.—Whether you were a clerk of Messieurs Moffatt and Kensington, in November, 1782?

Mr. Dodd.—The firm of the house was Wickenden, Moffatt, Kensington, and Bowler, at that period. I was clerk at that time.

Mr. Giles.—What book is that which you now hold in your hand?

Mr. Dodd.—This is the bill-book of that house, which I then kept.

Mr. Giles.—Were they bankers in London?

Mr. Dodd.—Yes.

Mr. Giles.—Is there any entry in that bill-book, in your hand-writing, which enables you to state, that a bill of a thousand pounds, payable by the lord advocate of Scotland, was paid on that day, the 22nd of November?

Mr. Dodd.—Here is an entry, made by me on the 20th of November, showing that a bill so drawn was paid in on that day, due the 22nd, for 1,000*l.* in my writing; but this book does not show that it was then paid; another book will show that, which is called the Goldsmith's book.

Then Mr. Thomas Dodd was cross-examined as follows:

Mr. Adam.—Was the bill presented to you, of which you read the entry?

Mr. Dodd.—This entry was made from the bill itself by me, as all entries in this book were.

Mr. Adam.—Was the bill presented to you by the person bringing it to the house?

Mr. Dodd.—It was entered by me amongst fourteen or sixteen other bills received at the same time from sir William Forbes and Company; it is entered amongst them under the date of the 20th of November, in my hand-writing.

Mr. Adam.—Am I to understand that it was given to you among a number of other bills that had been brought in, and were lying in the house?

Mr. Dodd.—It was brought in that day by the post, in all probability; that was the usual mode of their sending their bills.

Mr. Adam.—Who gave you the bill?

Mr. Dodd.—The custom of the house was, to put all bills that were paid in, in a certain box, with the name of the party, who had paid them in, written on the outer bill; and this appears to be one of the number which I have entered.

Mr. Adam.—After the bill was entered by you, in whose custody did that bill remain?

Mr. Dodd.—It was usual to take all bills that were accepted, after being entered, into the counting-house, to be locked up in a strong box; but if they were unaccepted, they were delivered out to the clerk to take them for the purpose of acceptance; but I cannot say whether this was an accepted bill or not; it appears it was due two days afterwards, the 22nd of the same month.

Mr. Adam.—Then all you know about the bill is, that it came to the house by some means or other, and was laid before you to be noted in that book?

Mr. Dodd.—Nothing more.

Then Mr. Thomas Dodd was re-examined as follows:

Mr. Giles.—Did the bill come to your house to be paid, or to receive payment of it?

Mr. Dodd.—To receive payment of it?

Mr. Giles.—Will the time when, and the manner in which that house received payment of the bill, appear by the Goldsmith's book, to which you have referred?

Mr. Dodd.—Yes, it will.

Mr. Giles.—Read the entry.

Mr. Dodd.—November 20th, Lord Advocate of Scotland, per I. Biggin and Co. 22nd November, 1,000*l.*

Mr. Giles.—Now I propose to call Mr. Scott, the person who kept the Goldsmith's book, to which this witness refers.

[The witness was directed to withdraw.]

Then Mr. George Scott was again called in, and examined as follows:

Mr. Giles.—Is there any entry in that book, in your hand-writing, by which you can state the date and the mode in which that bill was paid?

Mr. Scott.—It is entered here; K 12, 24th October, 1,000*l.*



Mr. *Giles*.---What does that entry relate to?

Mr. *Scott*.---A bill on the lord advocate of Scotland.

Mr. *Giles*.---Is there any reference to the folio of your bill-book?

Mr. *Scott*.---There is, it is 699.

[The witness was directed to withdraw.]

Then Mr. *Thomas Dodd* was again called in, and examined as follows:

Mr. *Giles*.---What is the folio of your bill-book, in which that entry appears?

Mr. *Dodd*.---It is 699.

A Lord.---You have used in the entry, the words "lord advocate of Scotland," were those words upon the face of the bill?

Mr. *Dodd*.---It is impossible for me to recollect at this time, I was in the habit of copying at the time what was written upon the bill, and I have no doubt that the bill was so addressed.

[The witness was directed to withdraw.]

Mr. *Giles*.---My lords, I now propose to enter upon a head of evidence, which is rendered necessary by your lordships being of opinion that the Iron Chest Account Book, which we have offered, cannot be received in evidence. Not being permitted to show by that book, the amount of the money which was placed in the iron chest, and not deposited at the Bank, I am under the necessity of supplying this, by producing other documents to your lordships, to show what proportion of the money, received by the treasurer of the navy, at the Exchequer, was not deposited at the Bank. This I shall do by the public official books of the Navy-pay-office, which will prove the amount of the treasurer's official balance; and I shall then show by the banker's book, how much of that balance was in the Bank; it will of course appear that the remainder was not in the Bank.

Then *George Fennell*, esq., was again called in, and examined as follows:

Mr. *Giles*.---What books are those you now produce? are they the public books of the Navy-pay-office?

Mr. *Fennell*.---They are; this purports to be the certificate-book of the navy branch.

Mr. *Giles*.---Can you, by reference to this book, state the balance in the treasurer's hand, on the 30th of April, 1783?

Mr. *Fennell*.---I can, as it appears by the books; the treasurer's balance under the head of navy, on the 30th April, 1783, is 42,201*l.* 7*s.* 11*d.*

Mr. *Giles*.---State the balance under the other two heads?

Mr. *Fennell*.---The treasurer's balance on the same day, under the head of pay or wages, the pay branch is 37,856*l.* and under the head of victualling 9,351*l.* 4*s.* 4*d.* making together a total of 89,408*l.* 12*s.* 3*d.*

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Mr. *Giles*.---Your lordships now have the treasurer's balance, according to the office-book of the Navy-pay-office, amounting to 89,408*l.* 12*s.* 3*d.* It will appear by the banking-book, which was in evidence before your lordships yesterday, that the treasurer had in the Bank on that day, only 66,408*l.* 12*s.* 3*d.* which is 23,000*l.* less than the office balance, so that there was 23,000*l.* not at the Bank.

Then the following entry was read from the banking-book.

"By balance carried to new account, 66,408*l.* 12*s.* 3*d.*"

Mr. *Giles*.---Now we mean to prove to your lordships that this 23,000*l.* was not at this time applied to naval service, by showing that it afterwards came into the Bank, and from private sources, unconnected with naval services.—Your lordships will permit me to recall to your remembrance the 5,000*l.* in November, the 3,000*l.* in November, and the 3,000*l.* in December, which it appears, already in evidence before your lordships, had not been paid into the Bank, but were received from the Exchequer. The first sum which we insist before your lordships to be a part of this 23,000*l.* and to have come into the Bank, is a sum of 1,000*l.* It was paid in, in bank-notes, on the 24th June, 1783, to the account of the treasurer of the navy, as appears by the entry in the treasurer's banking-book.

Then the following entry was read from the banking-book.

"The 24th June, 1783, bank-note 1,000*l.*"

[The witness was directed to withdraw.]

Mr. *Giles*.---The next payment, made on the 2nd of July, 1783, was 5,000*l.*; and I shall give your lordships more particular and distinct evidence of the sources from whence this sum came. I shall show your lordships that this 5,000*l.* came from the house of Mure and Atkinson; that they drew a draft for it upon their bankers, Messieurs Smith, Payne, and Smith; and that the notes given for that draft were paid into the Bank, on account of the treasurer of the navy.

Then Mr. *Henry Callander* was called in, and, being sworn, was examined as follows:

Mr. *Giles*.---Were you acquainted with the house of Messieurs Mure and Atkinson, and did you hold any situation in it?

Mr. *Callander*.---I was acquainted with the house.

Mr. *Giles*.---Did you hold any situation in it?

Mr. *Callander*.---Formerly; but not of late years.

Mr. *Giles*.---In the year 1783?

Mr. *Callander*.---I was not in the house then.



Mr. Giles.—Were you acquainted with the hand-writing of Mr. Dixon?

Mr. Callander.—Perfectly.

Mr. Giles.—What situation did Mr. Dixon hold in that house?

Mr. Callander.—The book-keeper of Messieurs Mure.

Mr. Giles.—Did he draw upon their bankers?

Mr. Callander.—He did, for the house.

Mr. Giles.—Is the signature to the draft, you now hold in your hand, the signature of Mr. Dixon?

Mr. Callander.—Most undoubtedly.

Mr. Giles.—What is that draft?

Mr. Callander.—It is a draft on Messieurs Smith and Payne, payable to the lord advocate, for the sum of 5,000*l.*; it is dated the 2nd of July.

Then the draft was read, and is as follows.

“No. 5,620. George-street, Mansion House, July 2nd, 1783.

Messieurs Smith, Payne and Smith,

Pay to the lord advocate, or bearer,

Five thousand pounds,

For Mure and Co.

5,000*l.*

JOHN DIXON.”

[The witness was directed to withdraw.]

Then Mr. John Hayne was called in, and, being sworn, was examined as follows:

Mr. Giles.—Were you clerk to Messieurs Smith, Payne, and Smith, in the year 1783?

Mr. Hayne.—I was.

Mr. Giles.—Look at that draft; can you state whether you paid that draft for Messieurs Smith, Payne and Smith?

Mr. Hayne.—I cannot.

Mr. Giles.—Can you, by reference to any books of that house, know whether you paid that draft?

Mr. Hayne.—I can know my own hand-writing, when it is produced.

Mr. Giles.—Look at that book now before you, and state whether that is your hand-writing?

Mr. Hayne.—It is.

Mr. Giles.—Does that enable you to state whether you paid that draft or not?

Mr. Hayne.—This draft is entered by me; but the bank-notes were paid and entered by another clerk, who is since dead.

Mr. Giles.—Is that draft entered by you, as a draft that was paid?

Mr. Hayne.—It is.

Mr. Giles.—Will it appear by any book belonging to that house, in what bank-notes that draft was paid?

Mr. Payne.—It appears by this book, what notes were paid, and no other I presume.

Mr. Giles.—Is the entry, by which the numbers and dates of the notes appear, your hand-writing?

Mr. Hayne.—The notes paid are not in my hand-writing.

Mr. Giles.—In whose hand-writing is that part of the entry which is not in your hand-writing?

Mr. Hayne.—That is the payment of the notes which was made by a gentleman in the house who is since dead; I believe it was made by him, but will not swear that.

Mr. Giles.—Is the description of the notes entered by you?

Mr. Hayne.—No, they are not.

Mr. Giles.—My lords, I shall not pursue this, as the entry of the bank-notes was not in the hand-writing of the witness. We of course have not the witness who made the entry here, he being represented to be dead, but I will now put in the banking-book of the treasurer of the navy, where it will appear that on the 2nd of July 5,000*l.* was paid into his account at the Bank in bank-notes, unless upon my producing the bank-notes which were paid in, and from which this entry is made, if they appear to have the same numbers and dates as are in that book, your lordships should be of opinion that it will be competent for me to read the entry at length.

Then the following entry was read from the banking-book.

“Old account, right honourable Henry Dundas, Bank 1782, 1783.

July 2nd, bank-notes, Clifford 5,000*l.*”

[The witness was directed to withdraw.]

Mr. Giles.—I will now produce the bank-notes for that 5,000*l.* paid in to the account of the treasurer of the navy.

Then Mr. Thomas Rippon was again called in, and examined as follows:

Mr. Giles.—Look at those bank-notes, is that your hand-writing at the back of them?

Mr. Rippon.—It is not.

Mr. Giles.—Do you know whose hand-writing it is?

Mr. Rippon.—I do; it is the hand-writing of a person of the name of John Clifford, who, at that time, was the senior clerk in the drawing office at the Bank.

Mr. Giles.—Is he dead?

Mr. Rippon.—He is dead.

Mr. Giles.—Whose hand-writing is the entry in the bank-book, of the receipt of the 5,000*l.*?

Mr. Rippon.—The entry is made by the same person, John Clifford.

Mr. Giles.—Owing to the death of these two persons, it will be impossible to carry that further than it is now stated. The next sum I propose to prove to have been paid in, on the treasurer's account at the Bank, is the sum of 1,400*l.* which appears by the banking-book to have been paid in bank-notes.

Then the following entry was read from the banking-book.

“July 12, 1783, ditto—Clifford, 1,400*l.*”



Mr. *Giles*.—What does “ditto” refer to?

Mr. *Rippon*.—Bank-notes.

Mr. *Giles*.—Now I proceed to another sum of 6,000*l.* which appears, by the banking-book, to have been paid in to the treasurer’s account at the Bank, and came from the house of Mure and Atkinson.

Then the following entry was read from the banking-book.

“July 11, 1783, ditto”---(that is bank-notes), “Clifford, 6,000*l.*”

[The witness was directed to withdraw.]

Then Mr. *Henry Callander* was again called in, and examined as follows:

Mr. *Giles*.---Do you know the hand-writing and signature of that draft?

Mr. *Callander*.---I do.

Mr. *Giles*.---Whose hand-writing is it?

Mr. *Callander*.---The late Mr. Atkinson’s.

Mr. *Giles*.---That is a draft upon Smith, Payne and Smith, the bankers of Mr. Atkinson, is it not?

Mr. *Callander*.---Yes.

Then the draft was read, and is as follows:

“11th July, 1783, pay to the right honourable Henry Dundas, six thousand pounds.

Mure, Atkinson, and Mure.

Messieurs Smith,  
Payne and Smith.”

Mr. *Callander*.---Messieurs Smith, Payne, and Smith, were the bankers of the house.

[The witness was directed to withdraw.]

Then Mr. *Daniel Dyke Edgar* was called in, and, being sworn, was examined as follows:

Mr. *Giles*.—Were you a clerk in the house of Messieurs Smith, Payne and Smith, in the year 1783?

Mr. *Edgar*.—Yes.

Mr. *Giles*.---Do you know any thing of the payment of the draft you now hold in your hand?

Mr. *Edgar*.---No more than by the waste-book.

Mr. *Giles*.---Is the waste-book in your hand-writing?

Mr. *Edgar*.---Yes.

Mr. *Giles*.---Can you refer to the entry in the waste-book respecting that draft?

Mr. *Edgar*.---Yes.

Mr. *Giles*.---Can you state from that entry, when you paid that draft?

Mr. *Edgar*.---I made a payment of 6,000*l.* on the 11th of July, as appears by the waste-book, in six bank-notes of 1,000*l.* each: the entry is in my own hand-writing.

Mr. *Giles*.---Read the whole of the entry.

Mr. *Edgar*.---B 261 to 276; that should be sixty-six I apprehend, they are following numbers.

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Lord Chancellor.---Read the whole entry.

Mr. *Edgar*.---Letter B 261 to 276.---There is put against that, the draft 6,000*l.*, from Mure and Company.

Mr. *Giles*.---Look at these notes, and see whether they are the notes you gave in payment of that draft?

Mr. *Edgar*.---The numbers are not entered correctly; but I verily believe these are the notes that were paid.

Mr. *Giles*.---Is there any one of these notes which you can state to have been paid by you on that day, in payment of that draft?

Mr. *Edgar*.---B 261, B 262, B 263;---they are not entered so in the book; they are put short, B 261 to 276.

Mr. *Giles*.---Can you state by that entry, that you paid any one of these notes, and how many, in payment of that draft?

Mr. *Edgar*.---One of the notes is entered wrong, instead of 276, it should be 267.

Mr. *Giles*.---Can you state that you paid any of these notes?

Mr. *Edgar*.---Yes; B 261 for 1,000*l.*—B 262 for 1,000*l.*—B 263 for 1,000*l.*—B 264 for 1,000*l.*

Mr. *Giles*.---Then there are four of the notes I understand you to have spoken to?

Mr. *Edgar*.---Yes.

Mr. *Giles*.---Read the other two notes.

Mr. *Edgar*.---B 266 1,000*l.*---there is on 265---and B 267 1,000*l.*

Then Mr. *Daniel Dyke Edgar* was cross-examined as follows:

Mr. *Plumer*.---Whether you have any remembrance of the transaction itself, except from the entry in the book?

Mr. *Edgar*.---None, but from the entry as it appears on the book.

Mr. *Plumer*.---Is there any thing upon the face of the notes, that enables you to say, that these are the identical notes that you paid?

Mr. *Edgar*.---No, there is nothing.

Lord Chancellor.---What dates are those notes? are they all of the same date?

Mr. *Edgar*.---We do not enter the dates in the waste-book.

Mr. *Giles*.---The notes themselves are dated 7th July, 1783; and I propose to prove that these notes were paid into the Bank on the 11th of July.

Mr. *Plumer*.---Is there any circumstance which enables you to state now, whether the first of these numbers might not be 271 or 270, leading in a series to 276?

Mr. *Edgar*.---It appears, by the entry, to begin with B 261.

Mr. *Plumer*.---But as there must be a mistake, either in the commencement or in the termination, I wish to know whether there is any circumstance that enables you to know where the mistake is?

Mr. *Edgar*.---I cannot, but from the entry as it stands in the book.

Mr. *Plumer*.---Can you say whether the mistake was one way or the other way?



Mr. *Edgar*.---I cannot.

Mr. *Plumer*.---Whether, judging from the entry alone, you would suppose, that the notes are in a regular series, ending with 276?

Mr. *Edgar*.---Yes; but the error lies in entering 276 instead of 266; I apprehend so.

Lord *Chancellor*.---The question is---Why do you apprehend so, any more than that the error should be at the beginning of the series?

Mr. *Edgar*.---It is the usual mode of entering them, when they are following numbers.

Lord *Chancellor*.---The notes presented to you now appear to be in an interrupted series.

Mr. *Edgar*.---It is an error in the entry, I apprehend.

Lord *Chancellor*.---These do not follow in a regular series---there is no 265, therefore they do not follow in a regular series.

Mr. *Edgar*.---The notes that have been presented to me do not.

Mr. *Plumer*.---Then I understand, that the notes presented to you do not correspond in the precise numbers, nor are they in a regular series?

Mr. *Edgar*.---No.

Mr. *Giles*.---The witness does not identify them all; but there are four that correspond, and to which he speaks.

Lord *Chancellor*.---Can you swear positively that 261, 262, 263, and 264, which you now hold in your hand, are the identical notes paid by you?

Mr. *Edgar*.---I cannot swear positively, because the numbers are not taken down, one, two, three, four.

Mr. *Giles*.---Can you swear that any one of these notes was paid by you for that draft?

Mr. *Edgar*.---The 261 was paid by me, as the entry appears.

Mr. *Plumer*.---Have you any reason for saying that identical note was paid by you, other than from the correspondence of the figures with the entry in your book?

Mr. *Edgar*.---Only from the number; I have not the date of the bank-note, only the letter and the number.

Mr. *Plumer*.---And the sum?

Mr. *Edgar*.---The sum is all carried out together, 6,000*l*.

Mr. *Giles*.---I have read the entry in the banking-book, in which it appears, that 6,000*l*. was entered to the credit of lord Melville that day in bank-notes.

Mr. *Plumer*.---Does any thing from the entry show that each of the notes was for a thousand pounds?

Mr. *Edgar*.---By the entry, B 261 to 6, six single notes, make six thousand pound notes.

Mr. *Plumer*.---Have you any other way of knowing that each note was for a thousand pounds, excepting that the sum total for the six notes was six thousand pounds?

Mr. *Edgar*.---No, I have not.

Mr. *Giles*.---Have you any doubt that these notes you have spoken to, are the notes you paid on account of that draft?

Mr. *Edgar*.---No doubt upon my mind at all; I am well satisfied I paid 6,000*l*. on that day, for the 6,000*l*. draft.

A Lord.---Whether Bank of England notes, bearing the same number and letter, but of a different date, and issued on a different day, might not have come into your hand as well as those bearing the date which appears upon the face of these notes?

Mr. *Edgar*.---I think it is possible it might be so, we do not take the date, but only the sum in the waste-book.

Mr. *Giles*.---Is there any other book kept at Messieurs Smith, Payne and Smith's, by which the dates of these notes might be ascertained?

Mr. *Edgar*.---I apprehend yes.

Mr. *Giles*.---What is that book?

Mr. *Edgar*.---The bank note book I apprehend. I have left the house a great many years. I think we could trace all the numbers.

[The witness was directed to withdraw.]

Mr. *Giles*.---My lords, we will produce that bank-note book to-morrow morning. There is another sum of 2,000*l*. which stands under nearly similar circumstances.---With your lordships' permission I will now go to the proof of that.

Then Mr. *Henry Callander* was again called in, and examined as follows:

Mr. *Giles*.---Do you know in whose hand-writing the signature to that draft is?

Mr. *Callander*.---I do.

Mr. *Giles*.---Whose hand is it?

Mr. *Callander*.---It is the signature of Mr. Dixon, for Mure and Co.

Mr. *Giles*.---What is the draft?---read it.

Mr. *Callander*.---"31st July, 1783, Messrs. Smith, Payne and Smith, pay to Mr. Henry Dundas or bearer, two thousand pounds.

For Mure and Co.

JOHN DIXON."

[The witness was directed to withdraw.]

Then Mr. *John George Payne* was called in, and being sworn, was examined as follows:

Mr. *Giles*.---Can you state at what time, and in what manner, that draft for 2,000*l*. was paid by the house of Smith, Payne and Smith?

Mr. *Payne*.---This draft was for 2,000*l*. the entry is for 4,476*l*. 10*s*. 10*d*.

Mr. *Giles*.---Is that entry your own hand-writing?

Mr. *Payne*.---It is my own hand-writing.

Mr. *Giles*.---Can you state whether the draft you hold in your hand was included in that sum?

Mr. *Payne*.---By a reference to the cash-book and the ledger, it appears that this draft of 2,000*l*. composed a part of the transaction of the 4,476*l*. 10*s*. 10*d*.



Mr. *Plumer*.---What is the denomination of this book?

Mr. *Payne*.---The Waste-book.

Mr. *Giles*.---Can you state from this entry, or any other entry in your own hand-writing, whether you paid any other draft on that day?

Mr. *Payne*.---It is impossible for me to swear that this is the draft that I paid.

Mr. *Giles*.---Did you pay any draft for 2,000*l.* drawn by Mure and Atkinson, on that day?

Mr. *Payne*.---There was no other draft on that day, payable to the same name of 2,000*l.*

Mr. *Giles*.---Are you now speaking from the book, and the entry in your own writing before you?

Mr. *Payne*.---The entry here is in my hand-writing, I have referred from this entry to the cash-book and ledger, I there found that there were two drafts.

Mr. *Giles*.---Were the cash-book and ledger kept in your hand-writing?

Mr. *Payne*.---No.

Mr. *Giles*.---Can you state from that entry, what bank-notes you paid on that day, in respect of a draft for 2,000*l.* drawn by Mure and Atkinson, upon the house of Smith, Payne and Smith?

Mr. *Payne*.---I paid two drafts at the same time; what particular notes went to the payment of those drafts, it is impossible for me to say.

Mr. *Giles*.---Can you state what bank notes you paid in respect of the two drafts?

Mr. *Payne*.---They are here.

Mr. *Plumer*.---With great submission, I rather think it will appear as to the payment of the drafts in question, he knows nothing, but from an entry in the book, which is not in his own hand-writing. The book before him, which is in his hand-writing, is silent upon the subject of that draft, and would not enable him to speak of its being paid at all.

Lord Chancellor.---Is that entry in your own hand-writing?

Mr. *Payne*.---Yes.

Lord Chancellor.---Let it be read.

Then the entry was read, and is as follows:

|            |          |                |
|------------|----------|----------------|
| C. 172..   | £. 1,000 |                |
| K. 959.... | 1,000    |                |
| K. 869.... | 1,000    | £. 4,476 10 10 |
| H. 409.... | 1,000    | Mure & Co.     |
| B. 77....  | 400      |                |
| R. 37....  | 50       |                |
| C. 16....  | 20       |                |
| Mo....     | 6 10 10  |                |
|            |          | £. 4,476 10 10 |

Mr. *Giles*.---Looking at these notes, can you state whether these are two of the notes that you paid, in respect of these drafts of Mure and Atkinson, on that day?

Mr. *Payne*.---They are the same numbers; but it is impossible for me to say that they are the same notes which I entered.

Mr. *Giles*.---Are they the same letters and sums?

Mr. *Payne*.---They are the same numbers.

Mr. *Giles*.---Do not the sums and the letters appear in the waste-book, as you have entered them?

Mr. *Payne*.---Yes.

Mr. *Giles*.---Do they correspond with the notes which I have put into your hand?

Mr. *Payne*.---They correspond with the entry in my hand-writing.

Then Mr. *John George Payne* was cross-examined as follows:

Mr. *Plumer*.---Have you any recollection of the transaction in question, except from the entry in the book before you?

Mr. *Payne*.---Assuredly not.

Mr. *Plumer*.---Is that the only book in which there is any entry on this subject, in your own hand-writing?

Mr. *Payne*.---This is the only book in which there is any entry upon the subject, in my own hand-writing.

Mr. *Plumer*.---Is there any notice taken in that entry in the book, which is in your own hand-writing, of the draft which you have in your hand?

Mr. *Payne*.---No.

Mr. *Plumer*.---Then from the entry alone, could you say that that payment of 4,476*l.* 10*s.* 10*d.* comprehended the draft in question, judging from that book alone?

Mr. *Payne*.---I can have no knowledge from this, that it comprehended this draft.

[The witness was directed to withdraw.]

Mr. *Giles*.---Your lordships had it in evidence yesterday, that two bank notes could not be issued of the same number, the same date, and the same sum.

Mr. *Plumer*.---There is no date here.

Then the following entry in the banking-book was read:

"June 31, 1783.

Bank-notes, Clifford—2,000*l.*"

Adjourned to the Chamber of Parliament.

FIFTH DAY.

Saturday, May 3, 1806.

The Lords and others came from the Chamber of Parliament into Westminster-hall, in the same order as on the first day of the trial.

Lord Chancellor.---Gentlemen, Managers for the Commons, you may now proceed with your evidence, and the Lords will be pleased to give their attention.

Mr. *Whitbread*.---My lords, the Commons have to trouble your lordships in the first in-



stance this morning with correcting what appeared to be a confusion, or indeed a mistake, in describing an entry made in the book of one of the bankers whose clerk was summoned before your lordships, with regard to a certain quantity of bank-notes; by which it appeared, that, owing to an error in the entry of the clerk, those bank-notes were not accurately described. Now, I have great satisfaction in informing your lordships, that there is no mistake whatever in the entry; but that the entry as it stands, and as it was read to your lordships in figures, but not as it was explained in language, is perfectly and circumstantially correct.

Your lordships will recollect, that there were certain bank-notes to the amount of 6,000*l.* in notes of 1,000*l.* each, which were tendered to your lordships. Your lordships will also recollect, that when the clerk, in whose hand-writing those bank notes were entered, appeared; in reading the last of them, he read, that they were entered as from 261 to 276. Now, the figures do stand so; but, upon a more strict examination, they do not imply that which the clerk said they did; for the entry stands in figures thus—261; then comes the figure 7, and then the figure 6; which read at length, and without the interpretation given by the clerk, might certainly import that which he stated in his confusion yesterday. But upon a more strict examination, and cool recollection,—for your lordships will easily conceive, that witnesses, before such a tribunal as this, may be flurried,—upon a cool recollection and revision of the entry, it turns out that 261 is the first number of the notes; that the figure 7 denotes, that these bank-notes were from 261 to 267; the figure 6, which he connected with the 7, and thereby read 76, is a figure standing alone, and importing that of those bank-notes there were six; so that 261 to 7 denote the numbers of each note, it is afterwards described by the figure 6 that there were six of them, and then comes the aggregate of 6,000*l.*

To go further, the witness could not tell how one bank-note, namely 265, had been disposed of; but, by turning to another entry in the same book, it will be proved, that the note 265, which was one of the parcel, was paid away to another commercial house a day or two before, of the name of Walpole. The whole entry of bank-notes is thus explained; and I hope so clearly, as not to admit the possibility of a doubt, that these were the bank-notes which were so issued. I am particularly anxious that no mistake should take place; and I own I felt great satisfaction this morning, when I found that the matter could be so explained. I beg to call in Mr. Edgar again.

Then Mr. Daniel Dyke Edgar was again called in, and examined as follows:

Mr. Whitbread.—Refer to an entry in that

book of the 11th of July, 1783, and read so much of it as is in your own hand-writing.

Mr. Edgar.—“B 261, to 7—6—6,000,” which means 6,000*l.*

Mr. Whitbread.—Do you mean by that, six notes of a thousand pounds each?

Mr. Edgar.—Yes.

Mr. Whitbread.—Do you mean that, the number 261, and the figures following that afterwards 6, 7, denote that they are of one series, 261 to 267?

Mr. Edgar.—There is a mistake, for 261 to 7 would make 7 notes. It appears by other books that the numbers paid for this were 261, 2, 3, 4, 6, 7.

Mr. Plumer.—Before the witness speaks of other books, I beg to know whether those other books are in his own hand-writing?

Mr. Edgar.—The note of 1,000*l.* omitted here, is in my own hand-writing.

Mr. Whitbread.—Whether those figures 261, with the addition of the figure 7, were not meant to comprehend the notes between 261 and 267?

A Lord.—I cannot help thinking that the question now put is a leading question, and that the witness ought simply to be asked what the figures do mean.

Lord Chancellor.—What do the figures commencing 261, and the figure 7 following that 261, denote?

Mr. Edgar.—They should denote six notes; but they do not.

Lord Chancellor.—What is it that they do denote?

Mr. Edgar.—They denote seven instead of six.

Mr. Whitbread.—How do you account for the seventh note, which you say is there denoted?

Mr. Edgar.—No. B. 265, was not paid with those notes.

Mr. Whitbread.—I wish to refer the witness to another entry in the same book, to account for that note, No. 265.—Have you any entry in your own hand-writing that connects itself with No. 265?

Mr. Edgar.—Yes, the entry is in my own hand-writing.

Mr. Whitbread.—What became of that note?

Mr. Edgar.—It was paid to Walpole and Company, bankers, in Lombard-street.

Mr. Whitbread.—Was that 265 also a note of 1,000*l.*?

Mr. Edgar.—Yes.

Lord Chancellor.—Read as much of that entry as is in your own hand-writing.

Mr. Edgar.—The whole is in my own hand-writing; it is the same date of the 11th of July, 1783; it was for sundry drafts brought in by Walpole and Company, to the amount of 1,661*l.* 5*s.* 4*d.* that this 1,000*l.* bank-note was paid.

Then the entry was read, and is as follows:



|                  |       |                   |
|------------------|-------|-------------------|
| K. 981 .....     | £. 10 |                   |
| K. 025 21st June | 100   |                   |
| B. 64 .....      | 500   | £.1,661 5 4 sund. |
| 105 .....        | 50    | WALPOLE.          |
| B. 265 .....     | 1,000 |                   |
| Mo. ....         | 1 5 4 |                   |
|                  |       | £.1,661 5 4       |

Mr. *Whitbread*.—It is now in proof before your lordships, that this number 265 is accounted for by the payment to Walpole and Company. Now, I wish the witness to refer again to the entry of the 11th July, and then I will put these notes into his hand, and wish he should be asked whether those notes supply the remainder of the seven notes that were so paid out the same day. Do you find number 261, number 264, number 266, number 267, with the letters, corresponding in sums, letters, and numbers with those contained in the entry in your own hand-writing?

Mr. *Edgar*.—Yes.

Then Mr. *Daniel Dyke Edgar* was cross-examined as follows:

Mr. *Plumer*.—My lords, I wish to go back to a question to which the witness did not seem to me to finish his answer—in describing what the mistake is in the first entry of the 11th of July, of which he speaks—I wish the witness would state what that mistake is.

Lord *Chancellor*.—Proceed to explain the mistake which you said belonged to that first entry.

Mr. *Edgar*.—By entering the 261 to 7 in this method of entering it is supposed that these are all following numbers, 1, 2, 3, 4, 5, 6, 7, but in the entry 5 is not among them.

Lord *Chancellor*.—Put the notes aside, and confine yourself to the entry as it appears upon the face of it. Look at that entry, and say what is the mistake you have before alluded to upon the face of that entry?

Mr. *Edgar*.—The mistake lies in 265 not being in this entry. It is usual, when the numbers are running from one to ten, or what not, to put them down one to ten; to call them ten numbers, as those are called six: but the bank-note B. 265, was not certainly paid to this draft; all the rest I have no doubt are right, because they correspond with my entry.

Mr. *Plumer*.—Whether, judging from the entry alone, without reference to any other entry, or to the notes which you have since been shown, you would not collect from that entry, that there had been seven successive notes, and not six following in progressive numbers? does not the entry import that?

Mr. *Edgar*.—Yes.

Mr. *Plumer*.—Would it not also import that they were in progressive numbers?

Mr. *Edgar*.—Yes.

Mr. *Plumer*.—How came you, yesterday, to represent that the numbers were in a series from 261 to 276; whereas you say now, that

the figures seven and six, are not to be considered as seventy-six, but as a 7 and a 6?

Mr. *Edgar*.—The entry terminates with the figure 7; and that 6 should have had a dot between it, to import 6 thousand pound notes.

Mr. *Plumer*.—Does it, upon the face of it appear to terminate with 7, or, is that the construction you put upon it to-day, contrary to your construction yesterday?

Mr. *Edgar*.—There is a distance between the 7 and 6, sufficient to put another figure between; there should have been a dot at the end of the 7; but, in reading it yesterday, I read that 76, whereas it should have terminated at 7, part of the number of the last thousand pound bank-notes, that the 6 here imports six one thousand pound notes.

Mr. *Plumer*.—If nothing but that entry had been presented to you, without any opportunity of referring to any entry in any other book, or to notes, would you have put the construction upon the entry which you are now giving, or that which you put upon it yesterday?

Mr. *Edgar*.—I should have supposed, looking upon the entry as it stands, that I had paid the person a thousand pounds too much.

Mr. *Plumer*.—Do you now mean to state, after all that has passed since you were examined yesterday upon the subject, that any thing that has been shown to you, brings back to your recollection any thing upon the subject, or only that it is by comparing these notes with the entry, that you draw that conclusion from it. Had you any distinct memory of it, beyond that which your entry itself imports?

Mr. *Edgar*.—No. I could not have answered it, but from reference to the books.

Mr. *Plumer*.—You have referred to another entry, relative to a sum of 1,661*l*. I desire to know whether that entry imports that there was money or drafts to that amount paid into the house, by Walpole and company, or, that it was paid out of the house?

Mr. *Edgar*.—It was paid to some clerk of Walpole's, who goes round to receive monies.

Mr. *Plumer*.—Am I to understand you that that bank-note, B 265, which is one of the notes described in that latter entry, relates to a bank-note that was paid by the house in which you were a clerk, to a clerk in the house of Walpole and Company?

Mr. *Edgar*.—Yes.

Mr. *Plumer*.—Am I to understand that the first and the second entry relate to two things entirely different; one to notes received, the other to notes paid by your house?

Mr. *Edgar*.—They are two distinct articles; but they are paid out, one to Walpole, and the other to Mure; the six thousand pound is paid to Mure's draft; the thousand pound note is paid out to Walpole's house.

Mr. *Whitbread*.—The managers for the Commons feel, that the cross-examination of the learned counsel has so completely esta-



blished the case, that they have no farther question to ask.

*A Lord.*—Which of these two entries, being both on the same day, stands first in the book?

*Mr. Edgar.*—The 1,000*l.* paid to Walpole and Company.

*A Lord.*—When you said, that looking at your entry only, you would have considered that you had paid a thousand pounds too much, whether you would have come to that conclusion if you had adverted to the figure 6, following the figure 7, and you would have still thought that you had paid a thousand pounds too much; because if it had gone on to 276, you would have paid sixteen notes?

*Mr. Edgar.*—Yes, if it was stated B 261, it would have made sixteen notes; but there should be a dot at 7; 7 and 6 are not connected in that respect; the 6 only denotes that there were six thousand pound notes paid.

*A Lord.*—Looking at your entry now, and seeing the 6 following the 7, in the manner that you have explained to us, would you collect from the entry now, that you had paid a thousand pound too much?

*Mr. Edgar.*—It does appear so upon the entry; to look at it as it stands, I should conclude that I had paid the person a thousand pound too much.

*A Lord.*—If upon considering your entry, beginning at 261, and ending at figure 7, you might think you had paid a thousand pound too much, whether you would still continue to think so, if you took into consideration the 6 following the 7?

*Mr. Edgar.*—I still should suppose that I had paid a thousand pound too much, unless I had referred to the books for the number 265.

*A Lord.*—In looking at your entry from 261, and finding the figure 7; do you find that the figure 6 follows the figure 7, with such an interval, or in any other manner, as enables you to give the explanation which you give of it?

*Mr. Edgar.*—Yes; the 7 and the 6 stand separate, considerably.

*A Lord.*—Was it usual, when you entered notes in series, as those notes are in series, for you to make a figure at the end of the series, to denote the number of notes?

*Mr. Edgar.*—No.

*A Lord.*—If it was not your usual mode, when you entered notes in series, or when you entered notes in the manner you have stated, to add at the end of it a figure, to denote the number of notes that you had received, or that you had paid; how came you, in this instance, to add the figure 6, after the termination of the series by the figure 7?

*Mr. Edgar.*—That figure 6 has no connexion with the bank-notes.

*A Lord.*—You have told the Court you conceive that the figure 6 does denote the number of the bank-notes, and that it has no connexion with the 7, and that the 7 stands pro-

perly in its place before the 6, the one being the termination of the notes, and the other to denote the number of notes paid.

*Mr. Edgar.*—The 6 has no connexion with the number on the bank-notes, or with the number of the notes; it implies that six one thousand pound notes were paid to that draft.

*A Lord.*—You consider that that figure 6 denotes the number of the notes that were paid?

*Mr. Edgar.*—Yes.

*A Lord.*—How would your entry have stood if you had been aware at the time that you were making it, that the note 265 had in an early part of the day been paid to Walpole?

*Mr. Edgar.*—It would have stood thus: B 261 to 4, then 6 and 7, and 5 would have been omitted.

*A Lord.*—Although it was not your practice to express the number of notes, yet if such a circumstance had taken place, in this case would it have been the course to have put the figure 6, to denote the number of notes?

*Mr. Edgar.*—Yes.

*A Lord.*—Can you refer to any other entry in your book that you have here, in which, in consequence of any inaccuracy, which otherwise would be apparent upon the face of the entry, you could have corrected it by the number of notes you received and paid?

*Mr. Edgar.*—We have a bank-note book here, where the notes appear to be in the house the night before.

*A Lord.*—Is there in that book, in your hand-writing, any other entry of notes similar in value, and following one another in series, as paid away on any day?

*Mr. Edgar.*—It would take a great deal of time to look for these numbers to see for any other numbers.

*A Lord.*—Why, when it was not your practice, as you have stated to the Court, to put at the end of notes following in series, or any how, a figure to denote the number of notes paid away, or that you received, how happened it that in this particular instance you put the figure 6, to denote that six bank-notes had been received?

*Mr. Edgar.*—I beg pardon of the Court, if I did say so; it is usual to put 5, 6, 8, 10, or whatever the numbers are.

*A Lord.*—When you pay away the notes, whether you do not intend always so to describe them, as that they should be distinguished from all other notes?

*Mr. Edgar.*—If they are not in a series of numbers, we always take the numbers down.

*A Lord.*—But, if they do follow in series, should they not be so described, as that those notes should be distinguished from all other notes?

*Mr. Edgar.*—It was not the practice of the house to do it in that mode, but to carry them on as here, from 1 to 10, and so on.

*A Lord.*—What do you consider to be a sufficient description to distinguish one note from another?



Mr. *Edgar*.—Entering it from No. 1 to 5, or 10, or whatever number it may terminate with.

A *Lord*.—Do you consider the number of a note to be sufficient to distinguish it from all other notes, without the addition of the date?

Mr. *Edgar*.—No; it is not sufficient.

A *Lord*.—Do the dates of those notes appear upon the face of the entry that you have referred to?

Mr. *Edgar*.—No.

A *Lord*.—Then if the date be necessary to identify a bank-note, as well as the number, as you have not entered the dates, how do you know that the notes presented to you are identically the same notes that appear in your entry?

Mr. *Edgar*.—I cannot take upon me to swear that these are the identical notes.

A *Lord*.—Having looked at and attended to both the entries in your own hand writing, can you take upon you to say from the entry, as it relates to the payment of the notes, beginning 261, that there was a payment of six thousand pounds on that day?

Mr. *Edgar*.—Yes.

A *Lord*.—Can you take upon you to swear that, taking into consideration both the entries?

Mr. *Edgar*.—I paid six thousand pounds certainly, to this draft of Mure's of six thousand pounds.

A *Lord*.—Taking both your entries into consideration, you can swear that you paid at the second time B 261, 262, 263, 264, 266, and 267?

Mr. *Edgar*.—I verily believe that it is so.

A *Lord*.—The question is, having both the entries before you, can you swear to that fact?

Mr. *Edgar*.—I can swear that I paid six thousand pounds against the draft of six thousand pounds.

A *Lord*.—Look at the entry in your book of the payment to Mure and Atkinson; does it not appear, by that entry, that No. 265 was paid to Mure and Atkinson?

Mr. *Edgar*.—Yes, it does appear so.

A *Lord*.—Look at the entry in your book of the payment to Walpole; does it not appear, from that entry, that 265 was paid to Walpole?

Mr. *Edgar*.—Yes.

A *Lord*.—Have you any other knowledge of the fact than what you derive from those two entries?

Mr. *Edgar*.—In the bank-note book, the evening preceding this transaction.

A *Lord*.—Is that bank-note book you allude to, your own writing?

Mr. *Edgar*.—No.

A *Lord*.—Have you, from any other entry in your own hand-writing, or from your own recollection, any knowledge of the fact, but what you derive from those two entries?

Mr. *Edgar*.—No.

A *Lord*.—Having stated that the one entry

imports that No. 265 was paid to Mure and Atkinson, and that the other entry imports that No. 265 was paid to Walpole, will you take upon yourself to swear in which of those entries the mistake exists?

Mr. *Edgar*.—It appears to me very clear, that the mistake lies in the entry of the payment made to Mure.

A *Lord*.—You having stated in your examination to-day, that the evidence which you had given yesterday, with regard to this figure, was founded in mistake; did that mistake occur to yourself, or was it suggested to you by any other person?

Mr. *Edgar*.—I discovered the mistake yesterday; in looking over the notes, and comparing them with the book, I found it immediately, and I did not know of the mistake before.

A *Lord*.—Upon looking at the draft which was to be paid to Mure and Atkinson, and looking at the entry which you say was an entry of what was paid, can you take upon you to say, whether six thousand pound, or seven thousand pound was paid?

Mr. *Edgar*.—Six thousand pound.

A *Lord*.—Taking all the circumstances which you have been communicating, that you were acquainted with, into consideration, are you satisfied that the explanation you have now given to the House is correct?

Mr. *Edgar*.—I am satisfied that there was no more paid to the house of Mure and Atkinson than six thousand pound.

A *Lord*.—You were understood to have sworn yesterday, positively, that these notes were the identical notes which you had paid; you are now called upon to explain how it is, that to-day you say, you cannot give the same evidence, you cannot swear to the identity of the notes?

Mr. *Edgar*.—I cannot recollect that I swore to the identity of the notes; if I did so, I was wrong; I could not swear to the identity of the notes, having no marks upon them.

A *Lord*.—Was that entry which refers to a payment of 6,000*l.* made all at one time?

Mr. *Edgar*.—Yes.

A *Lord*.—Can you say you have any recollection that you put the figure 6, following the 7, at the conclusion of the series, in order to denote, that, by mistake, the entry would exhibit the payment of a larger sum than you had made.

Mr. *Edgar*.—It was made at the time.

Mr. *Whitbread*.—My lords, the witness who made the entry in the bank-note book, is unfortunately dead.

Mr. *Whitbread*.—Do you know the hand-writing in that book?

Mr. *Edgar*.—I do not.

[The witness was directed to withdraw.]

Then Mr. *Thomas Ryle* was called in, and being sworn, was examined as follows:

Mr. *Whitbread*.—Are you a clerk in the house of Smith, Payne, and Smith?



Mr. Ryle.—Yes.

Mr. Whitbread.—What is that book you have in your hand?

Mr. Ryle.—A bank-note book.

Mr. Whitbread.—Refer to an entry of the 7th of July, 1783, relating to six bank-notes of a thousand pound each, that were paid out of the house on that day. Is that entry in your own hand-writing?

Mr. Ryle.—No.

Mr. Whitbread.—In whose hand-writing is it?

Mr. Ryle.—William Cunningham's.

Mr. Whitbread.—Is William Cunningham living or dead?

Mr. Ryle.—He is gone abroad; I believe he is dead.

Mr. Whitbread.—Can you swear that that is the hand-writing of William Cunningham?

Lord Chancellor.—Have you ever seen William Cunningham write?

Mr. Ryle.—Yes.

Mr. Whitbread.—Do you believe that to be his hand-writing?

Mr. Ryle.—I do.

[The witness was directed to withdraw.]

Mr. Giles.—Your lordships have been long occupied with the evidence relating to the 6,000*l.* which (as we have now shown) was paid on behalf of Mure and Atkinson, to lord Melville's treasurership account at the Bank.

My lords, I shall now call Mr. Callander, to prove, that there was a money connexion between lord Melville and the house of Mure and Atkinson; and I shall give in evidence several drafts drawn by lord Melville upon the house of Mure and Atkinson, which coming out of their custody, must be taken to have been paid by them.

Then Mr. Henry Callander was again called in, and examined as follows:

Mr. Giles.—Are the papers you hold in your hand, part of the papers of Mure and Atkinson?

Mr. Callander.—They are.

Mr. Giles.—Do you hold them for their assignees?

Mr. Callander.—They are held for their assignees.

Mr. Giles.—Have you any drafts drawn by lord Melville upon the house of Mure and Atkinson?

Mr. Callander.—I hold in my hand a draft dated Edinburgh, drawn by Henry Dundas upon Richard Atkinson; and, I believe it may save trouble if I add, I do not apprehend that any draft of his lordship's was ever drawn upon the house: they are all upon Richard Atkinson.

Mr. Giles.—Was Mr. Atkinson a partner in that house?

Mr. Callander.—Certainly.

Mr. Giles.—Are you acquainted with the hand-writing of lord Melville?

Mr. Callander.—Certainly not.

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Mr. Plumer.—If the honourable manager will show the drafts to us, we will admit every one that appears to be lord Melville's hand-writing.

Several drafts being admitted by the counsel, they were read, and are as follow:

Ed. 10th Aug. 1781.

"300*l.* Sterling.

P<sup>d</sup> 20th Aug.

Pay to Mr. John Spottiswoode, or order, the sum of three hundred pound sterling, on account of

HENRY DUNDAS.

Richard Atkinson, esq.

London.

(Indorsed)

Received JOHN SPOTTISWOODE.

(Witness) JOHN JOLLY.

Ed. 22nd Nov. 1781.

"300*l.* Sterling.

Pay to Mr. Newbigging, or order, three hundred pounds sterling.

HENRY DUNDAS.

To Richard Atkinson Esquire.

Fenchurch Street.

(Indorsed)

I. NEWBIGGING.

Pay Sir Robert Herries and Co. or order, value in account.

W. FORBES, J. HUNTER, and Co.

Received for Robert Herries and Co.

H. GOLDICOTT.

Ed. 17th January 1782.

"500*l.* Sterling.

Pay to Mr. James Newbigging or order, five hundred pounds sterling.

HENRY DUNDAS.

To Richard Atkinson Esquire.

Fenchurch Street, London.

(Indorsed)

I. NEWBIGGING.

Pay Messieurs Wickenden, Moffatt, and Co. or order, value in account.

W. FORBES, JAMES HUNTER, and Co.

Received,

Wickenden, Moffatt, Kensington, and Boler.

(Witness) J. BEETE."

Ed. 12th Sept. 1782.

"200*l.* Sterling.

Pay to William Bell or order, two hundred pounds sterling, to account of

HENRY DUNDAS.

Richard Atkinson Esquire.

Fenchurch Street London.

(Indorsed)

Pay to Messieurs Mansfield, Ramsay, and Co. or order, value received.

WILL. BELL."



May 22d, 1781.

"Messieurs Smith, Payne, and Smith.

Pay the lord advocate or bearer, three hundred pounds.

MURES, ATKINSON, and MURE.

300*l*.

(Indorsed)

HENRY DUNDAS.

Pay to Thomas Coutts Esquire, and Company, or order, value in account.

MANSFIELD, RAMSAY, and Co.

Received for Thomas Coutts and Co.

J. WILD."

Edin. 19th Sept. 1782.

"On demand, pay to Messrs. Bell and Rannie of Leith, or their order, five hundred pounds sterling.

HENRY DUNDAS.

To Richard Atkinson Esquire,

Fenchurch Street, London.

(Indorsed)

Pay to Messrs. Mansfield, Ramsay, and Company, or order, value received,

BELL and RANNIE.

Pay to Thomas Coutts Esquire, and Company, or order, value in account.

MANSFIELD, RAMSAY, and Co.

Received for Thomas Coutts and Co.

J. WILD."

Edin. 23d Sept. 1782.

"300*l*. Sterling.

Pay to William Bell or order, three hundred pounds sterling.

HENRY DUNDAS.

To Richard Atkinson Esquire,

Fenchurch Street, London.

(Indorsed)

Pay to Messrs. Mansfield, Ramsay, and Co. or order, value received.

WILL. BELL.

Pay to Thomas Coutts Esquire, and Company, or order, value in account.

MANSFIELD, RAMSAY, and Co.

Received for Thomas Coutts and Co.

J. WILD."

Edin. 9th Oct. 1782.

"500*l*. Sterling.

Pay to Sir William Forbes, I. Hunter, and Company, five hundred pounds sterling, to account of

HENRY DUNDAS.

To Richard Atkinson Esquire,

Fenchurch Street, London.

(Indorsed)

Pay to the order of Messrs. Wickenden, Moffatt, and Co. value in account.

W. FORBES, J. HUNTER, and Co.

Received for Wickenden, Moffatt, and Co.

G. SCOTT."

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Edin. 14th Oct. 1782.

"500*l*.

On demand, pay to William Bell, or order, the sum of five hundred pounds sterling.

HENRY DUNDAS.

To Richard Atkinson Esquire,  
Fenchurch Street, London.

(Indorsed)

Pay to Messrs. Mansfield, Ramsay, and Co. or order, value received.

WILL. BELL.

Pay to Thomas Coutts Esq. and Company, or order, value in account.

MANSFIELD, RAMSAY, and Co.

Received for Thomas Coutts and Co.

J. WILD."

Mr. Giles.—I believe these drafts amount to 3,700*l*.

Then Mr. Henry Callander was cross-examined, as follows:

Mr. Adam.—At what time did you come into the counting-house of Messieurs Mure and Atkinson?

Mr. Callander.—In the year 1765.

Mr. Adam.—How long did you continue there?

Mr. Callander.—About seven years.

Mr. Adam.—Whether you know, or knew, that there was any intercourse between lord Melville and Mure and Atkinson's house, upon the subject of colonel Dundas, lord Melville's brother?

Mr. Callander.—Not any knowledge whatever.

Mr. Adam.—Do you know the origin of any of those transactions to which these bills relate?

Mr. Callander.—Not in the slightest degree, but from the books of the house.

Mr. Adam.—Your lordships will observe, that the first bill is the 10th of August, 1781, for 300*l*. Is this the first bill that has been submitted to your inspection?

Mr. Callander.—It certainly is.

Mr. Adam.—Did you go to America upon the business of Messieurs Mure and Atkinson?

Mr. Callander.—Yes, in the year 1776.

Mr. Adam.—When did you return from thence?

Mr. Callander.—In the winter of that year.

Mr. Adam.—Did you continue connected in business, or in the knowledge of the business, of Messrs. Mure and Atkinson after that time?

Mr. Callander.—Not otherwise than by the books which I have seen and perused; I was in the habit of corresponding with Mr. Atkinson upon the public business entrusted to his care.

Mr. Adam.—Did you know the circumstances of that mercantile house in 1783?

Mr. Callander.—I certainly think I did.

Mr. Adam.—Was that mercantile house in good credit in 1783?

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Mr. Callandar.—I am perfectly satisfied in my own mind that they were.

Mr. Giles.—I must beg to interpose a question here, whether the witness knows any thing of the circumstances of the house, but what he collects from the books?

Mr. Adam.—I submit to your lordships, that the question I put is perfectly regular?

Mr. Giles.—I contend before your lordships that the question I interposed is perfectly right, and that I am entitled to know whether the witness derived his knowledge from that source which renders his evidence legal.

Lord Chancellor.—Solvency is a fact; the question was, whether the house of Mure and Atkinson was, at that time, a house in good credit?

Mr. Callandar.—I believe they were.

Lord Chancellor.—How long did they continue to be a house in good credit?

Mr. Callandar.—For many years subsequent to that period.

[The witness was directed to withdraw.]

Mr. Giles.—The managers now call back Mr. Oliver, the clerk of Messieurs Drummond. The learned counsel for the defendant, asked him some questions about interest, of which he was to inform himself, and we now call him before your lordships for the purpose of their asking him those questions.

Then Mr. Thomas Oliver was again called in, and examined as follows:

Mr. Plumer.—When did interest first begin to be charged upon lord Melville?

Mr. Oliver.—From the 29th of April, 1784.

Mr. Plumer.—How much was the total of interest charged from that period, down to 1800, without going into the particulars?

Mr. Giles.—I wish it to be understood what the witness is speaking from, when he states the amount of interest.

Lord Chancellor.—From what documents are you now speaking?

Mr. Oliver.—I selected from the ledger the different charges made for interest.

Mr. Giles.—The managers do not object to that being stated, as from the ledger, provided it be understood that the witness is now speaking from the ledger.

Mr. Plumer.—Have you any knowledge upon the subject, except what you collect from the books?

Mr. Oliver.—Many of the interest accounts were made out by myself.

Mr. Plumer.—Did you settle those accounts with lord Melville?

Mr. Oliver.—No.

Mr. Plumer.—Were the accounts sent to lord Melville?

Mr. Oliver.—No.

Mr. Plumer.—What do you mean by being made out?

Mr. Oliver.—The calculation upon the sums advanced.

Mr. Plumer.—Calculations in the books?

Mr. Oliver.—Calculations upon paper, of the different advances from period to period, and at the end of each year charges were made.

Mr. Plumer.—Do you speak of calculations made at the time, in the course of your business, as a clerk of that house?

Mr. Oliver.—As a clerk of the house during the time I was in that department.

Mr. Plumer.—You did make a calculation of interest then?

Mr. Oliver.—I did.

Mr. Plumer.—Are those papers upon which you made that calculation of interest now in existence?

Mr. Oliver.—I believe in court, along with the rest of my lord Melville's vouchers.

Mr. Plumer.—Have you delivered that calculation to the solicitor employed by the managers?

Mr. Oliver.—I believe all the calculations were with the vouchers.

Mr. Plumer.—In whose possession are the vouchers and those calculations?

Mr. Oliver.—They were delivered to Mr. Kaye, yesterday morning.

Mr. Giles.—They are here, and will be produced, if the learned counsel wishes for them.

Mr. Plumer.—Then they will speak for themselves.

Mr. Giles.—I desire it may not be understood, that the managers for the Commons admit that these calculations are to be received as evidence, without the production of the books from which the witness took them.

Mr. Plumer.—When those calculations are produced it will be time enough to debate that question.

[The witness was directed to withdraw.]

Mr. Giles.—It is now proposed to call Mr. Fennell, the accountant of the Navy-pay-office; and it may be necessary to recall the attention of your lordships to the proof which was given yesterday of the difference between the official and the Bank balance on the 30th April 1783, which difference amounted to 23,000*l.* Your lordships will observe that this is an ex-treasurer's balance, for lord Melville has been proved to have been then out of office. He went out on the 11th of April 1783, and on the 30th of that month, the difference between the official and the Bank balance was 23,000*l.* On the part of the Commons, we have by the Bank books proved the payment since that time into the Bank account, of the several sums of 1,000*l.* 5,000*l.* 1,400*l.* 6,000*l.* and of 2,000*l.*, amounting altogether to 15,400*l.*, which being deducted from 23,000*l.*, will still leave a deficiency or difference of 7,600*l.*

Then George Fennell, esq. was again called in and examined as follows:

Mr. Giles.—What was the balance in the



treasurer of the navy's hand on the 31st of July 1783?

Mr. Fennell.—It appears by the certificate books, and the cashier of the victualling's journal.

Mr. Giles.—Are the books you are now about to refer to, public official books in the Navy-pay-office.

Mr. Fennell.—Two of them are, for the navy branch.

Mr. Giles.—Is this one of them?

Mr. Fennell.—It is.

Mr. Giles.—What was the balance on the navy branch?

Mr. Plumer.—What is this book? how is it made? and how are the balances in it ascertained?

Mr. Fennell.—It is the certificate book of the Navy branch, made out by one of the clerks.

Mr. Plumer.—Who is the clerk who made it out?

Mr. Fennell.—The clerk who made out the certificate, was John Slade, jun. at that time.

Mr. Plumer.—Is that gentleman living or not?

Mr. Fennell.—He is living, and now on service at Chatham.

Mr. Plumer.—Have you any knowledge upon the subject of the balances, except what you collect from the entries of this John Slade, jun. who is now at Chatham?

Mr. Fennell.—No, none whatever but from those books.

Mr. Plumer.—And how Mr. Slade knew what the balances were that are entered in the book, you do not know?

Mr. Fennell.—Not particularly.

Mr. Plumer.—I understood you to call them certificate books; are not the certificate books signed by the paymaster? and are those books so signed?

Mr. Fennell.—The certificate books are not signed by the paymaster.

Mr. Plumer.—And these are not signed, are they?

Mr. Fennell.—They are not signed by any one.

Mr. Plumer.—Are the certificate books transmitted to the Navy-office?

Mr. Fennell.—No; but copies from them are made out and signed by the paymaster, and sent to the Navy-board.

Mr. Plumer.—This book is not a copy of a certificate book made out and signed by the paymaster?

Mr. Fennell.—No, it is not.

Mr. Plumer.—Do you mean to say that those books signed by the paymaster and sent to the Navy-board are copies of the whole of this book?

Mr. Fennell.—They are certificates, made out generally from the first to the fourteenth of every month, and afterwards from the fifteenth to the end of the month, except in the pay branch in which the accounts are made up monthly, the Navy and Victualling twice a month.

Mr. Plumer.—Do the certificates so signed by the paymaster, contain every entry to be found in that book?

Mr. Fennell.—They do, and should generally, except the memoranda of the balances.

Mr. Plumer.—Whether those books, which are transmitted to the Navy-office by the paymaster, are previously examined and checked by the paymaster?

Mr. Fennell.—I can only say, I suppose they are.

Mr. Plumer.—Are these so?

Mr. Fennell.—I cannot speak positively to that.

Mr. Plumer.—When you spoke of balances on a former day, was it collected entirely from the book before you, or had you any other means of knowledge of the balances?

Mr. Fennell.—I spoke from the book before me.

Mr. Plumer.—Was it this same book?

Mr. Fennell.—This book, and a book of a similar nature.

Mr. Plumer.—Not a book made by yourself?

Mr. Fennell.—No.

Mr. Plumer.—Not signed by any body?

Mr. Fennell.—Not signed by any body.

Mr. Plumer.—Not examined by any body?

Mr. Fennell.—That I cannot speak to.

Mr. Plumer.—And those were the materials from which you swore to the balances on a former day?

Lord Chancellor.—Had you any other materials from which you spoke?

Mr. Fennell.—No.

Mr. Plumer.—Was it in your own office and department?

Mr. Fennell.—It is in my office to have these books under my custody.

Mr. Plumer.—Is the business, to which the entries relate, done in your department?

Mr. Fennell.—They were made in a separate branch of the office.

Mr. Plumer.—Not in the accountant's branch?

Mr. Fennell.—There was no accountant's branch at that period.

Mr. Plumer.—Were you employed officially in any one of the branches to which the entries relate?

Mr. Fennell.—I was.

Mr. Plumer.—In which?

Mr. Fennell.—I was employed in one of the branches, but not in making up the certificates.

Mr. Plumer.—Did you in stating the balances, speak from books which you were not concerned in making up?

Mr. Fennell.—I was not concerned in making them up.

Mr. Plumer.—Have you any knowledge whatever on the subject of these balances, except what you collected from the books?

Mr. Fennell.—None.

Mr. Giles.—Was the book you have in your hand, one of the public office books, during the treasurership of lord Melville?



Mr. Fennell.—It was.

Mr. Giles.—Have you made out the accounts of lord Melville's treasurership, from that book, and others of the same description?

Mr. Fennell.—They are made out from this book, and others of a similar description.

Mr. Giles.—Without going into any further evidence, the managers on the part of the Commons contend before your lordships that these books are evidence against lord Melville, as being the public office books of his treasurership.

Lord Chancellor.—Are you aware the witness has said, that the book in question, from which you propose to ask him the amount of the treasurer's balance, upon the 31st of July, 1783, is in the hand-writing of John Slade, jun. who now is at Chatham? that there is a copy of the same book, which has been made out and signed by the paymaster, and transmitted by him to the Navy-board? yet you do not produce that book, signed by the paymaster, nor call the clerk, though he be living, who made that entry.

Mr. Giles.—We do not produce the certificate transmitted to the Navy-office, because we conceive we should then be producing the copy of this entry.

Lord Chancellor.—Signed by the paymaster, the deputy of lord Melville?

Mr. Giles.—Yes, my lord, signed by the paymaster, not as the original document, but for the purpose of communicating certain information to the Navy-board, and therefore, not being an entire copy of this book. There are certain parts of this book, of which the treasurer of the navy must inform the Navy-board; and the certificate of the paymaster is made, in order to communicate that information. The certificate is prepared by copying a part, but not the whole of this book, and it is then transmitted to the Navy-board, with the paymaster's signature, for the information of that board. But I contend that this, which is the original official book, kept in the Navy-pay-office, by officers appointed by and under the control of lord Melville, is as much evidence against lord Melville, as the books of every merchant in the city are evidence against him, though kept by his clerks, and not proved to have been inspected by him. Could it be contended, that the books of such merchant would not be evidence against him, because the clerk, who made the entry, was living, and not produced? If I show it to be the book of the merchant, kept by his authority, it is sufficient to entitle me to read it against him. Here I prove this to be an official book, kept in lord Melville's office by his clerks, and an original document. I contend, therefore, that this book is evidence, and I insist upon it, not from the difficulty of supplying other evidence (because I know I can prove the fact by other means), but for the sake of establishing the general rule, that those public books, which are kept in the

Navy-pay office, by a clerk appointed by, or acting under lord Melville, are evidence against him, without either calling or proving the hand-writing of that clerk, but merely producing the book, and proving it to be one of the public documents, so kept in the office which lord Melville superintended. The point appears to me perfectly clear; and I cannot illustrate it better than by reference to the common case of a merchant, whose books are kept by his clerks; and there can be nothing more settled, than that such books would be evidence against him.

Mr. Sergeant Best.—It is extremely important, that your lordships should decide this point; namely, whether these books are now to be received in evidence, because the book, to which your lordship has referred, will not so completely answer the purposes of justice, as those now offered: the managers are therefore driven to take your lordships judgment, whether these books now presented are not the proper books your lordships should proceed upon. I humbly conceive that, upon consideration, your lordships will see that these are the proper books; and for this plain reason, because the others are, in point of fact, copies made from these books: these are the original books; and if any books are received as evidence, they must be original books, and not copies.

It has been suggested, that the person who made these books, Mr. Slade, is not here: I conceive that the character of these books does not render it necessary that the person who made them should be called: if that were so, books from the public offices could scarcely ever be produced. In a variety of cases, it may be necessary to produce office books, after the entries are made, which those books contain, I think it can scarcely be contended, much less decided, that your lordships would not receive office books, after the death of the persons by whom the entries in those books were made. I have always understood,—and I state it with deference to your lordships much better judgment,—that books kept in public offices are evidence; books kept in offices of less importance, the books of the Bank would be received without calling the clerks, by whom the entries were made, because those are public books, and it is necessary to keep them for a length of time, longer than the persons can live who made the entries. But there is another ground upon which I conceive it impossible the learned counsel for the defendant can contend, that these books are not to be received. It was stated by the witness, in answer to a question of your lordship's, that the accounts of lord Melville are made up from these books; then lord Melville, by signing those accounts, has given credit to these books, and made them, as I conceive, evidence in any court against himself.

Upon these two grounds; in the first place, that these being the books of a public office,



bear with them a character derived from that circumstance, which makes them evidence in any court; and secondly, that these books having furnished the materials, from which the account of the noble defendant has been made up, he has by that account given them credit;—I trust your lordships will receive them. If the copies should be presented to your lordships, they will want one material circumstance which these possess, that, in these books, balances are struck. We propose to show your lordships the ascertained balances, and they cannot be proved from the books to which your lordships have referred.

*Mr. Solicitor General.*—My lords, I shall add but very few words to what your lordships have already heard; and I should not indeed trespass upon your lordships' time, for a single moment, if it were not on account of the extreme importance of the question which is now brought before you.

My lords, if these public books, of a public office, are not to be received as evidence in a court of justice, the necessary consequence must be, that it will never be possible, either to convict a public officer of misconduct in his office, or to charge him civilly with sums which he has received. The Commons conceive, not only that the evidence offered to your lordships is proper, but that it is the best evidence that could be given; that the certificates, as they have been called, or rather the extracts, written out and signed by the paymaster, are an inferior kind of evidence, and ought not to be admitted by your lordships, if the originals can be, as in this case they are, produced. The books offered, are books kept in the office, by the proper officer. I do not say they are conclusive evidence, because, undoubtedly, a person attempted to be charged upon the evidence of these books, may, if possessed of the means of doing it, show that there is some error in them; but these books are kept for no purpose but that of showing what is the state of the public money paid into the office; what are the receipts, what the payments, and what the balances, at certain times: those are the only purposes for which they are kept.

With respect to the certificates, which your lordship has heard are signed by the paymaster, they are in truth copies or extracts, taken from these books and sent to the Navy-board; they are signed, not for the purpose of giving authenticity to them as originals, but, for the mere purpose of ascertaining, that they are true and accurate copies or extracts from those public documents, the books which are now offered in evidence. If your lordships were to receive those extracts in preference to the evidence now before you, you must decide that a copy of a public record is evidence of a superior nature to the record itself.

With respect to the objection that Mr. Slade is not produced as a witness, we have proved that he was the proper officer to make

the entries, and we have proved that the entries were made by him; and I have never understood that it was necessary, in order to prove the hand-writing of a party, that you should call him, himself, as a witness; but, on the contrary, that the proper medium of proof was the testimony of some other person, acquainted with his hand-writing. If we were to call Mr. Slade, it would be to show that these entries were made by him, in the execution of the duty imposed on him as a public officer. Have we not done that already, by showing that he was a public officer, and that the entries were made by him? In addition to all that we have shown that lord Melville's accounts, as treasurer, were made up from these books; that he has himself adopted them; that he has made them his own books; that he has stated his own accounts from them; and after all this, can it possibly be contended, that the evidence ought not to be received? I will not add a word more upon the subject, and indeed I feel that I ought rather to apologise to your lordships, for having said so much, than for not saying more.

*Lord Chancellor.*—What is that book?

*Mr. Fennell.*—It is called the certificate book for the Navy-branch.

*Lord Chancellor.*—Who appoints Mr. Slade?

*Mr. Fennell.*—The treasurer of the navy.

*Lord Chancellor.*—Who appointed Mr. Slade in this instance?

*Mr. Fennell.*—I believe he was appointed to the office prior to the treasurership of lord Melville.

*Lord Chancellor.*—Was he continued by lord Melville?

*Mr. Fennell.*—Certainly.

*Lord Chancellor.*—Does the paymaster of the treasurer of the navy, when he is furnished with a copy of that book which you have in your hand, from time to time sign it, and transmit it to the Navy-board?

*Mr. Fennell.*—He does.

*Lord Chancellor.*—Is there in the Navy-office at this time any such copy so signed by the paymaster?

*Mr. Fennell.*—I cannot speak certainly, but I believe there is.

*Lord Chancellor.*—Do you mean that the paymaster signs a copy of that book, or only certificates that are extracted from that book for his signature?

*Mr. Fennell.*—To the best of my knowledge and belief it is an exact copy, except the memoranda, at the foot of each, which regards the balances.

*Lord Chancellor.*—The balances are constituted by casting up the book, are they not?

*Mr. Fennell.*—The general balance is struck on the book, and the memoranda divides it into different parts.

*Lord Chancellor.*—Does the paymaster sign any balance which is copied from that book into the other book sent to him?

*Mr. Fennell.*—The general balance he does.



Mr. *Giles*.—Will your lordships permit the witness to read for your information (not as evidence) that part of the book which is not copied?

Mr. *Fennell*.—I have before me the certificate between the first and thirty-first of July 1783, in lord Melville's first treasurership. In the Navy-branch the balance appears to be 16,734*l.* 14*s.* 1*d.* the memoranda at the foot is "whereof in Bank 7,201*l.* 7*s.* 11*d.* money, and premiums 18*l.* 7*s.* 6*d.*;—in Mr. Slade's hands 5,515*l.* 13*s.* 1*d.* Exchequer fees 3,999*l.* 5*s.* 7*d.*" making together the general balance I have just read.

Lord *Chancellor*.—When the paymaster has transmitted to him a copy of that which you have been now reading, does he subscribe that general balance?

Mr. *Fennell*.—He does.

Lord *Chancellor*.—Do you know whether in this instance he did so?

Mr. *Fennell*.—I cannot speak to this particular instance, it is in the course of office so to do.

Mr. *Giles*.—I believe the witness has misunderstood; that which the witness has last read is not that which is copied.

Lord *Chancellor*.—Is that which you have last read any part of the certificate that is transmitted to the paymaster for his signature?

Mr. *Fennell*.—No.

A *Lord*.—Is that memoranda any thing more or less than the result of what you before stated?

Mr. *Fennell*.—It is the particular disposition of the general balance.

A *Lord*.—What were the duties of the office of Mr. Slade?

Mr. *Fennell*.—He was a clerk in the Navy-branch.

A *Lord*.—What are the duties of a clerk in the Navy-branch?

Mr. *Fennell*.—They are various.

A *Lord*.—For what purpose was that account, you have now in your hands, kept by Mr. Slade?

Mr. *Fennell*.—It is the treasurer's cash account, the account of receipts and payments.

A *Lord*.—Is that account kept for the purpose of enabling the paymaster to certify to the other branch?

Mr. *Fennell*.—Certainly.

A *Lord*.—How often are these certificates transmitted from the treasurer to the Navy-office?

Mr. *Fennell*.—For the Navy and Victualling branches, they are transmitted twice a month; for the Pay-branch, once a month.

A *Lord*.—Is that the book from which extracts are made, for the information of the particular departments?

Mr. *Fennell*.—This book contains the particulars transmitted to the Navy-board for their information.

A *Lord*.—And these accounts contain ac-

counts from time to time, being parts only, as I understand you, of that general entire account?

Mr. *Fennell*.—The parts of a general account.

A *Lord*.—Was any other clerk, but Mr. Slade, employed to make out certificates?

Mr. *Fennell*.—The certificates are written by other clerks, besides Mr. Slade, in this book?

Mr. *Plumer*.—Will your lordships permit me to ask a question? Whether the particulars, making up the general balances, constitute a part of the account, made out to be signed by the paymaster, and sent to the navy-board?

Mr. *Fennell*.—They do not.

Mr. *Plumer*.—Then these do not form any part of the account sent to the treasurer and paymaster?

Mr. *Fennell*.—They do not.

Mr. *Plumer*.—The paymaster's certificate, which is transmitted twice in a month, does it contain all the accounts up to the time when it is sent?

Mr. *Fennell*.—It does.

A *Lord*.—Except the memoranda of the balances?

Mr. *Fennell*.—Yes; except the memoranda of the balances, as I before stated.

A *Lord*.—From what materials in the office does Mr. Slade make up that book, and strike those balances?

Mr. *Fennell*.—I apprehend from materials furnished him by the chief clerk in the office, who pays bills and receives money, and also by the gentleman who attends the Exchequer receipts.

A *Lord*.—Is there kept, in the office, any copy of that certificate which is transmitted by the treasurer to the Navy-office?

Mr. *Fennell*.—None other but this book.

A *Lord*.—If you had occasion to turn to any items in the account, should you refer to that book, which lies before you as the original, or to those other certificates you have before stated?

Mr. *Fennell*.—To this book.

A *Lord*.—Supposing any accident were to happen to that book, now before you, in what manner could the account be supplied?

Mr. *Fennell*.—I do not know any other way, than by obtaining copies from the accounts transmitted to the navy board; that would be the most simple way; there may be other materials in the office, from which an account might be made, but that I cannot speak positively to.

A *Lord*.—When there is a necessity, from time to time, to make up the treasurer's account, what materials are to be found in this book for that purpose?

Mr. *Fennell*.—The receipts and the general payments.

A *Lord*.—Are those materials, exclusive of the memoranda, containing the particulars of the balances?



Mr. Fennell.—They are exclusive of the memoranda of the particulars of the balances?

A Lord.—Are the memoranda of those particulars resorted to and collected from the book?

Mr. Fennell.—Yes, in making up the treasurer's account.

A Lord.—It has been stated that these certificates are made up from the book; whose business is it to make up those certificates?

Mr. Fennell.—I do not know that it has been the particular business of any one gentleman, or clerk, in the navy and pay branches; but I know that for these thirty years past, it has been the custom in the victualling branch, for the chief clerk in that branch to make up the certificate.

A Lord.—Is the certificate made up by the same person who keeps the book? If it should happen that in making the transcript, which the certificate purports to be, of a part of the entry, it should be found there was an error in the book in making the calculation, would that error be copied in the certificate, or the certificate be made out correctly?

Mr. Fennell.—The copy from the beginning would be examined with it, I conceive; and if there was any error, it would be corrected.

A Lord.—If an error was discovered in the making the transcript, and that error was not copied in the certificate, but the certificate was made correct, would that correction be made in the book, so as to make it tally with the certificate?

Mr. Fennell.—I apprehend it would.

A Lord.—Whose duty would it be to compare the book, for the purpose of that correction being made?

Mr. Fennell.—I apprehend the gentleman who made out the particular branch, and his principal.

A Lord.—You cannot speak with any certainty, whether it is ascertained that, in all cases, the certificate is an exact transcript of the book itself?

Mr. Fennell.—It is the course of office, that it should be an exact transcript, except the memoranda before mentioned.

A Lord.—If the certificate contained any mistake in making that transcript, might not that mistake be set right, by resorting to those books which you call Office-books?

Mr. Fennell.—It would.

A Lord.—I submit to your lordships, that the managers may proceed.

Lord Chancellor.—The counsel for lord Melville have a right to answer the observations of the managers, if, after the explanation which has been given, they still think it their duty to the noble lord to resist this evidence.

Mr. Plumer.—I beg to be permitted to put a question to the witness.

A Lord.—The regular way would be for the learned counsel to suggest the question to any peer.

A Lord.—The question is this—whether the

paymaster has not materials of his own, by which he can make out the certificate, and correct this book, if this book is not sufficient material for him for that purpose?

Mr. Fennell.—The paymaster, I conceive, has an account; of his own balances certainly he must have, and his own balances with those of the sub-accountants, must make a general balance, which he signs to.

A Lord.—Are those materials of such a nature, that he might make out the account which he certifies, without having resort to that book?

Mr. Fennell.—He could not, without the assistance of the different pay clerks.

A Lord.—With that assistance, could he make out the accounts which he transmits, and certifies, without having recourse to that book?

Mr. Fennell.—I think he could.

A Lord.—Do you know of any instance of any account transmitted to the Navy-office, that does not proceed upon that book now before you for its foundation?

Mr. Fennell.—I do not.

Lord Chancellor.—Mr. Plumer, you may now be heard, if, after all this explanation, you are of opinion this evidence can be resisted.

Mr. Plumer.—From the way in which that is put to me, I should conceive that I shall not be considered to neglect the duty I owe to the noble lord, the defendant, if I forbear giving your lordships any farther trouble upon the subject.

Lord Chancellor.—Gentlemen, managers for the House of Commons, you may proceed.

Mr. Giles.—I call Mr. Fennell for the purpose of showing, that the difference between the official and the Bank balance, on the 31st July, 1783, was 7,600*l.* being 15,400*l.* less than the 23,000*l.* which we proved to have been the difference, on the 30th of April preceding. Of what branch have you now got the certificate book before you.

Mr. Fennell.—The Navy branch.

Mr. Giles.—What was the treasurer's balance in that branch, as it appears on the book, on the 31st July, 1783?

Mr. Fennell.—7,201*l.* 7*s.* 11*d.*

Mr. Plumer.—The book now is the evidence, and not the testimony of the witness; and therefore I beg he will read the entry himself, in order that your lordships may know what it is.

Lord Chancellor.—Read the entry to which you are referring.

Mr. Fennell.—It is called "in Bank."

Mr. Plumer.—The witness is going to read, not that which I understand your lordships to have decided to be evidence, namely, the entries of receipts and payments in the book, but the memoranda which are taken from other entries in the book. I beg to know from whence those memoranda are taken.

Lord Chancellor.—From whence are those memoranda taken?



Mr. *Fennell*.—They can be taken no other-wise than from the information of the different accountants, including the paymaster.

Mr. *Plumer*.—Is it from verbal or from written information, from the sub-accountants and the paymaster, that those balances are put down?

Mr. *Fennell*.—I cannot speak distinctly to that.

Mr. *Plumer*.—Do not you know that each sub-accountant keeps a book containing his receipts and payments?

Mr. *Fennell*.—He does keep a book.

Mr. *Plumer*.—Does the paymaster likewise?

Mr. *Fennell*.—I apprehend he does; he must, in fact.

Mr. *Plumer*.—Must not each of these subdivisions that constitute these memoranda be entered in the books of the paymaster and the other sub-accountants?

Mr. *Fennell*.—I apprehend they must appear in their separate books.

Mr. *Plumer*.—Are not those the books from whence those separate memoranda are taken?

Mr. *Fennell*.—I apprehend they are.

Lord Chancellor.—Is it the course of office to enter all those memoranda in that book?

Mr. *Fennell*.—Yes, it has been the custom of the office to enter the memoranda at the foot of each certificate for each branch.

Mr. *Plumer*.—May I be permitted to ask respecting these memoranda, whether there is not a distinction?—Your lordships will find, there are now in existence different books, kept by each subordinate officer, in which is contained an account of his receipts and payments. There is a book, therefore, in the possession of each subordinate officer, from which it will be known, at any one period, what is the balance in his hand. Each of these books contains an original and true account, which is the result of the balances, and is therefore clearly the best evidence, being kept by the person whose department it is, who knows the fact, and has made the entry in his own book upon the subject. Now the utmost that this book, lying before the witness, can amount to is this: it is nothing but a copy from other books, made by this clerk in office, which other books are the official and proper books, that represent the balance in the hands of each individual. It appears to me, with great submission, that the most correct and the best evidence, as to what balance each individual had in his hands at any time, is the official account such individual kept at that time; and not that secondary intelligence which any other clerk in the office has derived from the former, and which at most is only second-hand information, and derivative knowledge from the principal in whose department that business lies.

Mr. *Adam*.—Will your lordships permit me to state the manner in which I understand his? and if the statement is not satisfactory,

I will not trouble your lordships with any argument upon it. Your lordships observe, that this account contains receipts and disbursements; that there is a general balance struck, which amounts to sixteen thousand and odd pounds; that general balance so struck, constitutes the whole of the account; but there is, at the bottom of the account, under the word "whereof," a distribution of that general balance into different parts. The first head of that distribution is, Money to the Bank—the second head is, Small Payments—the third head is, Mr. Slade's Balance—and the fourth head is, Exchequer Fees. Now, this subdivision of the balance is not taken by an application to the Bank, because, upon the occasion, the sub-accountants are asked what their balances are—they give their balances from their own books; and in this case, the balance given in by Mr. Slade is 5,500*l*. Now, if that balance is erroneous, and less, that will swell the balance at the Bank—if it is more, it will diminish the balance at the Bank. The use that is meant to be made of this book is, not merely to give in evidence the general balance; but the object is, to give in evidence the minute parts of which this balance is composed. And we submit, that although the best evidence, which the nature of the thing will admit of, with regard to the general balance, is this book, against the admission of which we do not now contend, yet that it is not the best evidence with respect to the component parts of the general balance; but that you must have recourse to the books of the sub-accountants, from which this statement is taken. If there is any thing in that objection, it will have its proper weight with your lordships.

A Lord.—If it shall appear to your lordships, that the arguments of the counsel shape themselves against the conclusiveness of this book, and not against its admissibility, I think the managers might proceed.

Lord Chancellor.—If lord Melville's counsel still think, after what has been said by the witness, that they can shake the admissibility of this book, they have most undoubtedly a right to be heard upon that point before your lordships come to any decision; but I should rather suggest to them, whether, upon reconsidering the matter, they would press for a decision?

Mr. *Plumer*.—Certainly I will not give your lordships any farther trouble. Does there appear any date annexed to the balance in the Bank?

Mr. *Fennell*.—It purports to be the balance in the Bank on the 31st July, 1783.

Mr. *Plumer*.—There is no date to the entry, I believe.

Lord Chancellor.—Read the entry itself.

Mr. *Fennell*.—"Between the 1st and 31st July, 1783."

Mr. *Plumer*.—The date at the top of the receipts is between the 1st and 31st of July; but there are among the receipts and payments



different dates given, and, at the foot of the account, the balance is stated without any date to that balance.

*Lord Chancellor.*—Is that entered in the ordinary official course, ending consequently with the last date?

*Mr. Fennell.*—It is.

*Mr. Plumer.*—Whether there is not a posterior date in the same page—the date of September, 1783?

*Mr. Fennell.*—There is, but I have but this moment observed it. I apprehend that is an error in the date.

*Mr. Plumer.*—What is that posterior date that you apprehend to be an error? and why do you apprehend it to be so?

*Mr. Fennell.*—It is the 10th of September, which is certainly subsequent to the 31st of July, on which day the account purports to end.—“10th September, 1783. By issue to the paymaster to carry on payments and recalls, 10,000*l*.”

*Mr. Plumer.*—To whom should that have been issued?

*Mr. Fennell.*—The chief clerk of the Pay branch would have paid that.

*Mr. Plumer.*—Would it not have appeared from the book of the chief clerk of the Pay

branch, whether that was accurate or not? Must not that have been taken from the book of the chief clerk of the Pay branch?

*Mr. Fennell.*—No, it is not.

*Mr. Plumer.*—From what is that taken?

*Mr. Fennell.*—I cannot speak precisely what kind of memorandum is given to the clerk who makes out this certificate.

*Mr. Plumer.*—I wish the witness to read the next entry.

*Mr. Fennell.*—The next entry is the 22nd.

*Mr. Plumer.*—The 22nd of what month?

*Mr. Fennell.*—As it stands here, it appears the 22nd of September, 1783.

*Mr. Plumer.*—What is that entry?

*Mr. Fennell.*—“By issue to the paymaster, to carry on payments and recalls, 10,000*l*.”

*A Lord.*—I wish that the whole page may be read.

*Another Lord.*—And after that is read, I should wish that the first item in the next page may be read.

*Lord Chancellor.*—Read that page first, and then the other.

Then the whole of the entries in that page of the book were read, and are as follow :



|                                                                                                                                                                                                |  |  |         |       |  |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--|--|---------|-------|--|
| " 31st July, 1783. Dr. Between 1st and 31st July, 1783, viz.                                                                                                                                   |  |  |         |       |  |
| To balance of the preceding account, dated 30th June, 1783.....                                                                                                                                |  |  |         |       |  |
| 1783, July 10. To received of the treasurer of the navy, to carry on<br>recalls in this treasurership.....                                                                                     |  |  | £.      | s. d. |  |
| 22. To received of ditto to ditto .....                                                                                                                                                        |  |  | 26,929  | 13 9  |  |
| 31. To abatements made and bills taken in towards<br>clearing the following interests, viz.                                                                                                    |  |  | 10,000  | 0 0   |  |
|                                                                                                                                                                                                |  |  | 10,000  | 0 0   |  |
|                                                                                                                                                                                                |  |  |         |       |  |
|                                                                                                                                                                                                |  |  | 17,193  | 10 0  |  |
|                                                                                                                                                                                                |  |  |         |       |  |
| Lieut. R. Gillingham                                                                                                                                                                           |  |  | £.      | s. d. |  |
| W.A.Brandrith                                                                                                                                                                                  |  |  | 1,071   | 4 11  |  |
| P. Stuart                                                                                                                                                                                      |  |  | 1,080   | 0 0   |  |
| W. Haygarth                                                                                                                                                                                    |  |  | 639     | 11 4  |  |
| Ditto                                                                                                                                                                                          |  |  | 50      | 0 0   |  |
| Ditto                                                                                                                                                                                          |  |  | 450     | 0 0   |  |
| Ditto                                                                                                                                                                                          |  |  | 200     | 0 0   |  |
| William Williams, in the pre-<br>sent treasurership .....                                                                                                                                      |  |  | 600     | 0 0   |  |
| Ditto                                                                                                                                                                                          |  |  | 900     | 0 0   |  |
| Thomas Roberts, in the present<br>treasurership .....                                                                                                                                          |  |  | 74      | 6 4   |  |
| Ditto                                                                                                                                                                                          |  |  | 711     | 4 1   |  |
| Ditto                                                                                                                                                                                          |  |  | 270     | 0 0   |  |
| Ditto                                                                                                                                                                                          |  |  | 25      | 0 0   |  |
| Captain William Lloyd, in the present<br>treasurership .....                                                                                                                                   |  |  | 12      | 7 7   |  |
| Ditto                                                                                                                                                                                          |  |  | 127     | 2 5   |  |
| Captain William Cumming .... ditto                                                                                                                                                             |  |  | 865     | 3 3   |  |
| Ditto                                                                                                                                                                                          |  |  | 134     | 16 9  |  |
|                                                                                                                                                                                                |  |  |         |       |  |
| To received of Mr. Watson, for rope supplied his<br>brigantine Aurora, in distress, by the boatswain<br>of his majesty's ship Minerva, as per board's let-<br>ter of the 31st March, 1783..... |  |  | 7,210   | 16 8  |  |
| To cash received towards clearing Captain Henry<br>Lloyd's imprests .....                                                                                                                      |  |  | 12 17 7 |       |  |
|                                                                                                                                                                                                |  |  | 5 9 11  |       |  |
|                                                                                                                                                                                                |  |  | 54,158  | 17 11 |  |

|                                                                                 |        |       |     |
|---------------------------------------------------------------------------------|--------|-------|-----|
| By perfect bills paid<br>as per list of parti-<br>culars .....                  | £.     | s. d. | Cr. |
| Imprest ditto, paid<br>as per ditto .....                                       | 1,497  | 5 2   |     |
|                                                                                 | 17,193 | 10 0  |     |
|                                                                                 |        |       |     |
| 1783. By perfect bills sick and hurt, paid<br>as per ditto.....                 | 230    | 13 10 |     |
|                                                                                 |        |       |     |
| Sept. 10. By issued to the paymaster, to carry<br>on payments and recalls ..... | 10,000 | 0 0   |     |
|                                                                                 |        |       |     |
| 22. By issued ditto to carry on ditto ..                                        | 10,000 | 0 0   |     |
|                                                                                 |        |       |     |
|                                                                                 | 37,424 | 3 10  |     |
|                                                                                 | 16,734 | 14 1  |     |
|                                                                                 | 54,158 | 17 11 |     |
|                                                                                 |        |       |     |
| Whereof,                                                                        | £.     | s. d. |     |
| In Bank .....                                                                   | 7,201  | 7 11  |     |
| Money and premiums                                                              | 18     | 7 6   |     |
| Mr. Slade's hands ..                                                            | 5,513  | 13 1  |     |
| Exchequer fees ....                                                             | 3,999  | 5 7   |     |
|                                                                                 | 16,734 | 14 1  |     |



Then the witness read the first item of the next page, 31st July, 1783, as follows,  
"7,201*l.* 7*s.* 11*d.*"

*A Lord.*—The reason why I desired the first item, in the second page, to be read, was this, that your lordships find the preceding account consisted of sums of money, one as low as the 22nd of September. Your lordships will find the next balance carried forward, the same sum, but carried forward as upon the 31st July.

*A Lord.*—Can you account for the circumstance of the accounts having been kept in this manner, in the months of July and August?

*Mr. Fennell.*—I cannot account for the entry of the account I have just read, except an error. It is manifest to me that it is an error, because I read two sums on the debit side of the treasurer of this account, for July 1783, as money received of the treasurer of the navy, 10,000*l.* each, which answers to the 10,000*l.* on the other side, dated in September. They should have been, as I conceive, dated exactly on the same day, the month only is altered.

*A Lord.*—How soon after the period, when the account purports to bear date, is it made out? for instance, how soon after the 31st July, would that account in the course of office have been made up?

*Mr. Fennell.*—In the course of office, certainly, before there was another certificate day; that is before the 14th of the following month.

*A Lord.*—Read the two sums on the credit side, which correspond with the two sums on the debtor side.

The witness read from the book last delivered in, the following entries:

| Dr.                                                                                                               |                | Cr.                                                                                                 |                |
|-------------------------------------------------------------------------------------------------------------------|----------------|-----------------------------------------------------------------------------------------------------|----------------|
| July 10, Received of<br>the Treasurer of<br>the Navy to car-<br>ry on Recalls in<br>this Treasurer-<br>ship ..... | } £.<br>10,000 | Sept. 10, By is-<br>sue to the Pay-<br>master to car-<br>ry on Pay-<br>ments and Re-<br>calls ..... | } £.<br>10,000 |
| 22nd.—The same sum to the same purpose.                                                                           |                |                                                                                                     |                |

*Mr. Giles.*—What is the meaning of the words, "in Bank?" Does it mean in the hands of the treasurer?

*Mr. Fennell.*—It is the mode in this branch of expressing the treasurer's balance.

*Mr. Giles.*—What was the balance in the Pay-branch, on the 31st of July, 1783?

*Mr. Fennell.*—56*l.* paymaster's or treasurer's balance—172*l.* 0*s.* 3½*d.* Mr. Jellicoe's. 403*l.* 5*s.* 9½*d.* Mr. Taylor's.—6,571*l.* 9*s.* 10½*d.* Mr. Lynch's.—4,723*l.* 16*s.* 5½*d.* Mr. Malpas'.—making together 11,926*l.* 12*s.* 4½*d.*

*Mr. Giles.*—Now refer to the Victualling-branch.

*Mr. Fennell.*—The balance for the Victualling branch, to the 31st July, 1783, is not made up.

*Mr. Giles.*—What book is that you have before you?

*Mr. Fennell.*—The certificate book for the Victualling-branch.

*Mr. Giles.*—Does the aggregate balance appear by that book?

*Mr. Fennell.*—From the 1st July only, to the 30th September, 1783. It being an ex-treasurership account, it is not made up monthly.

*Mr. Giles.*—This is an ex-treasurership account, and when the account is become so they usually make up the balances once in three months. They made up the account of the Navy, and the Pay branches on the 31st July: but the Victualling-branch was not made up till the end of the quarter in September. I will now call the chief clerk of the Victualling-branch who will state what the balance was at the Bank on the 31st July, 1783.

*Mr. Plumer.*—You have said the balance for that month is not made up, is the balance made up for the succeeding month?

*Mr. Fennell.*—No; not in this book.

*Mr. Plumer.*—Are any balances made up in that book for the Victualling-branch?

*Mr. Fennell.*—None between the 1st July and the 30th September.

*Mr. Plumer.*—Should the balances be made up monthly, according to the course of the office?

*Mr. Fennell.*—It has not been customary to do so when the treasurership becomes an ex-treasurership.

*Mr. Plumer.*—Is there any distinction of that kind in the accounts as they refer to the Victualling-branch? they do not appear to be unfinished in the other branches?

*Mr. Fennell.*—I do not know the reason why they are not made parallel to each other.

*Mr. Plumer.*—As they are made up in the other two branches, can you state why they are not made up in this particular branch?

*Mr. Fennell.*—I cannot state the reason why they are not.

[The witness was directed to withdraw.]

Then *George Swaffield*, esq. was again called in, and examined as follows:

*Mr. Giles.*—Were you chief cashier of the Victualling-branch of the Navy-pay-office, in the month of July, 1783?

*Mr. Swaffield.*—I was.

*Mr. Giles.*—What was the treasurer's balance, in that branch on the 31st July, 1783?

*Mr. Swaffield.*—There was no account made up for that month.

*Mr. Giles.*—Can you, by reference to your journal, ascertain the balance on that day?

*Mr. Swaffield.*—No.

*Mr. Giles.*—Have you any book with you, by reference to which you can ascertain the balance on that day?

*Mr. Swaffield.*—I cannot.

*Mr. Giles.*—What was the balance the last day of June, 1783?



Mr. Swaffield.—At the end of June the last balance was in the whole 20,045*l.* 8*s.* 10½*d.*

Mr. Giles.—What proportion of that sum was the balance of the treasurer?

Mr. Swaffield.—9,351*l.* 4*s.* 4*d.*

Mr. Giles.—Can you, by referring to your journal, and looking at your receipts and payments in July, state what the balance was on the last day of July?

Mr. Swaffield.—I cannot.

Mr. Giles.—Can you, by reference to your journal, state what sum you received in the month of July, on account of the treasurer?

Mr. Swaffield.—On the 11th of July, I received 1,400*l.*, and on the 12th of the same month I received of him 5,600*l.*

Mr. Giles.—If these two sums are deducted will that make the treasurer's balance on the 31st July?

Mr. Swaffield.—It will.

Mr. Giles.—What will that make the treasurer's balance at that period?

Mr. Swaffield.—It will make the treasurer's balance on the 31st of July, 2,351*l.* 4*s.* 4*d.*

Then George Swaffield, esq. was cross-examined, as follows:

Mr. Adam.—Whether, in making out the balances there have not frequently been errors which have been a considerable time existing before they have been detected?

Mr. Swaffield.—Not at this time that I recollect.

Mr. Adam.—At any other time?

Mr. Swaffield.—Yes, since I was under the necessity of keeping my money at two banks, part in the Bank of England, and part in the bank of Coutts and Co. I charged myself on one occasion with 5,000*l.*, which, in fact, I had not received from the treasurer.

Mr. Adam.—How long have you been in the office?

Mr. Swaffield.—I have been in the office sixty years.

Mr. Adam.—Were you in the office at the time Mr. Grenville was paymaster?

Mr. Swaffield.—I was.

A Lord.—Do you know of any other error than that which you pointed out just now?

Mr. Swaffield.—No other but one of the same kind. By having balances at two bankers, I upon another occasion charged myself with 10,000*l.* more than I received from the treasurer of the navy.

A Lord.—Were these errors soon afterwards rectified?

Mr. Swaffield.—I believe, in one of them, it was near twelve months before I discovered where the error was.

A Lord.—Are both these errors rectified?

Mr. Swaffield.—They are.

Mr. Giles.—Your lordships now have as the office balance of the treasurer, on the 31st of July 1783,—7,201*l.* 7*s.* 11*d.* in the Navy-branch, 36*l.* in the Pay-branch, and 2,351*l.* 4*s.* 4*d.* in the Victualling-branch,—making a total of 9,608*l.* 12*s.* 3*d.* for the official balance.

I shall now show your lordships by the banking book which is already in evidence, that the Bank balance of the treasurer on the 31st of July 1783, was only 2,008*l.* 12*s.* 3*d.* being 7,600*l.* less than his official balance.

The following entry was read from lord Melville's banking-book, denominated "Old Account.—1783, 31 July, By balance to New Account 2,008*l.* 12*s.* 3*d.*"

[The witness was directed to withdraw.]

Mr. Giles.—The difference then between the balances your lordships see was 7,600*l.* in July, it having been 23,000*l.* in April. I have proved the payments of sums amounting to 15,400*l.* into the Bank, by which the difference between the balances was so reduced, and having in part ascertained the sources from whence these payments came, I now propose to ask Mr. Fennell, who has examined the books of the Navy-pay-office, whether either of these sums of which the 15,400*l.* is composed, was paid in to the account of the treasurer of the navy from any public source whatever, or whether the treasurer has debited himself with the public for either of these sums.

Then George Fennell, esq. was again called in, and examined as follows:

Mr. Giles.—Has the treasurer debited himself in his public account with either of the sums of 1,000*l.* on the 24th of June 1783—5,000*l.* on the 2nd July 1783—1,400*l.* in the same date—6,000*l.* on the 11th July, and 2,000*l.* on the 31st. Have you examined the official books of the Navy-pay-office in order to ascertain that fact?

Mr. Fennell.—I have.

Mr. Giles.—If either of these sums had been received from any public source, would he have so debited himself?

Mr. Fennell.—He would have debited himself in these books before me.

Then George Fennell, esq. was cross-examined as follows:

Mr. Plumer.—Specify in what official books that debit would have appeared?

Mr. Fennell.—The official books for the Navy-branch and the Victualling-branch. There are no receipts and issues out to the Pay-branch from the Exchequer, or from individuals, as there are in the Navy and Victualling.

Mr. Plumer.—These are all the books in fact?

Mr. Fennell.—They are all the books in which such entries would, or ought to be made.

[The witness was directed to withdraw.]

Mr. Giles.—I have now to call your lordships' attention to lord Melville's second appointment, which took place on the 2nd January, 1784. He then became again trea-



suror of the navy, and opened a new account at the Bank for that treasurership, which will be distinguished hereafter by calling it the new account, as the first treasurership account will be distinguished by calling it the old account.

Then Mr. *John Gimingham* was again called in, and examined as follows:

Mr. *Giles*.—What is that book you hold in your hand?

Mr. *Gimingham*.—The treasurer's bank-book.

Mr. *Giles*.—Is it the old account, or the new account?

Mr. *Gimingham*.—The new account, 1784. "The Right Honourable Henry Dundas, Bank, 1784."

Mr. *Giles*.—I am about to show your lordships, by reference to this account and the old account, that transfers were made from the second treasurership to the first treasurership; that four transfers were made, amounting together to 6,000*l.*, which reduced the deficiency upon the first treasurership from 7,600*l.* to 1,600*l.* These transfers were made without any authority from the Navy-board, without which authority the treasurer could not legally make them. The first transfer is of 2,000*l.* on the 13th of March, 1784.

Then the following entries were read:

"The old account, right honourable Henry Dundas, Bank, 1782."

"13th March, 1784, right honourable Henry Dundas, new account, 2,000*l.*"

Read from a book intitled, "New Account, 1784, Right Honourable Henry Dundas, Bank, 1784," the following entry:

"1784, March 31, Dundas, old account, 2,000*l.*"

Read from old account, "24th April, 1784, right honourable Henry Dundas, new account, 1,000*l.*"

Read from new account, "30th April, 1784, the right honourable Henry Dundas, 1,000*l.*"

Read from old account, "17th June, 1784, the right honourable Henry Dundas, new account, 1,500*l.*"

Read from new account, "30th June, 1784, the right honourable Henry Dundas, old account, 1,500*l.*"

[The witness was directed to withdraw.]

Mr. *Giles*.—The debits are not entered on the particular day, but they are entered all on one day, the day the book goes to be settled. The next is in another of the banking books, and I must call another clerk to prove it.

Then Mr. *Charles Lemage* was called in, and, being sworn, was examined as follows:

Mr. *Giles*.—Are you a clerk in the Bank?

Mr. *Lemage*.—Yes.

Mr. *Giles*.—Do you know that book, and have you written in it?

Mr. *Lemage*.—I have.

Mr. *Giles*.—Do you know whether that is a banking book of the treasurer of the navy?

Mr. *Lemage*.—It is.

Read from a book, intitled, "Old Account, the right honourable Henry Dundas, Bank, 1784," the following entry:

"1785, March 1, honourable H. Dundas, N. A. J. R. 1,500*l.*"

Read from new account, before delivered in: "1785, April 1, by Dundas, 1,500*l.*"

[The witness was directed to withdraw.]

Mr. *Giles*.—Now I will call Mr. *Rippon*, a Bank clerk, who will show the manner in which the entries of vouchers are made.

Then Mr. *Thomas Rippon* was again called in, and examined as follows:

Mr. *Giles*.—In what mode do the Bank have the vouchers written off, in the banking book of the persons who keep cash with them, with respect to dates?

Mr. *Rippon*.—When vouchers are written off, the transaction is dated on the day on which that is done, without regard to the day on which it is paid; that is the uniform practice.

Mr. *Giles*.—What do the letters N. A. J. R. mean?

Mr. *Rippon*.—March the 1st, the right honourable Henry Dundas, N. A. which are the initials for new account—J. R. are the initials of the person so writing in the credit, 1,500*l.*

[The witness was directed to withdraw.]

Mr. *Giles*.—Having shown there were 6,000*l.* transferred from the new treasurership to the old, I shall show that the effect of that has been, to reduce the deficiency or difference between the balances of the first treasurership to 1,600*l.*

Then *George Fennell*, esq. was again called in, and examined as follows:

Mr. *Giles*.—What was the balance of the treasurer of the navy, upon his old account, on the 31st March, 1785?

Mr. *Fennell*.—It is not stated in the certificate book for March, 1785.

Mr. *Giles*.—Why is it not?

Mr. *Fennell*.—I do not know, there appears to be no variation in the treasurer's balance from the 31st of December, 1784, till the 30th of June, 1786.

Mr. *Giles*.—What was the treasurer's balance on the 30th of December, 1784?

Mr. *Fennell*.—The treasurer's balance on the 31st of December, was 701*l.* 7*s.* 11*d.*

Mr. *Giles*.—Did that continue unvaried?

Mr. *Fennell*.—It continued unvaried till the 31st of March, 1786.

Mr. *Giles*.—What branch is that?

Mr. *Fennell*.—The Navy branch.

Mr. *Giles*.—Turn to the next—the Pay-branch.



Mr. Fennell.—The treasurer's balance in the Pay-branch, on the 31st of March, 1785, was 1,056*l*.

Mr. Giles.—What was it in the Victualling?

Mr. Fennell.—In the Victualling branch the treasurer's balance on the 31st of March, 1785, was 851*l*. 4*s*. 4*d*.

Mr. Giles.—That will give the official balance of the treasurer on the 31st of March, 1785, to be 2,608*l*. 12*s*. 3*d*.—I shall now show your lordships that the bank balance on that day was 1,008*l*. 12*s*. 3*d*. being 1,600*l*. less than the official balance.

Then the following entry was read :

“ Old Account,—Right Honourable Henry Dundas, Bank.

“ 1785, March 31.—By balance to New Account 1,008*l*. 12*s*. 3*d*.”

Mr. Giles.—Now I have reduced the difference between the official balance and the Bank balance of lord Melville's first treasurer-ship, to 1,600*l*. and there we shall leave it. It remained in that state till after the death of Mr. Douglas, and the appointment of Mr. Trotter to be paymaster.

The next evidence I have to offer relates to the second treasurer-ship. The transfers proved to have been made from the second treasurer-ship to the first would leave a deficiency in the second treasurer-ship of 6,000*l*. and, if that were the only deficiency, it might be sufficient to show your lordships what was the difference between the official and the bank balance of that treasurer-ship, after the transfers had been made; but between the periods of two of these transfers, there was a draft drawn for 2,000*l*. in favour of Mr. Swaffield, which draft I shall call Mr. Swaffield to prove was never given to him. It was a draft drawn upon the Bank, payable to him or bearer; but not on his account, or ever given to him; and that draft is dated the 24th August, 1784.

Then the following entry was read :

“ New Account, 1784,—The right honorable Henry Dundas, Bank, 1784.

“ 1784, August 30th, Swaffield 2,000*l*.”

[The witness was directed to withdraw.]

Then George Swaffield, esquire, was again called in, and examined as follows :

Mr. Giles.—Did you receive a draft for 2,000*l*. upon the bank, or the produce of such draft, in the month of August, 1784?

Lord Chancellor.—What papers are those you are referring to?

Mr. Swaffield.—They are copies of accounts with which I have furnished the managers.

Lord Chancellor.—It is more regular to refer to the original.

[The witness refers to the book.]

Mr. Plumer.—Is that in your own hand-writing.

Mr. Swaffield.—All this is in my own hand-writing.

Mr. Giles.—Look at the 24th of August, 1784?

Mr. Swaffield.—I received no money of the treasurer of the navy on that day.

Then George Swaffield, esq. was cross-examined, as follows :

Mr. Plumer.—In August 1784, by whom was the detail of the business of the treasurer's office managed?

Mr. Swaffield.—Mr. Douglas, he was then the treasurer's paymaster.

Mr. Plumer.—Was the detail of business managed by Mr. Douglas?

Mr. Swaffield.—So far as respected the victualling, it was certainly managed by me.

Mr. Plumer.—Which department is this particular payment in?

Mr. Swaffield.—In the Victualling branch.

Mr. Plumer.—Who would have been to issue the money to you in that branch?

Mr. Swaffield.—Mr. Douglas.

Mr. Plumer.—Did Mr. Douglas draw all the drafts upon that subject?

Mr. Swaffield.—Mr. Douglas at times was very much afflicted with the gout, and had not the power of drawing.

Mr. Plumer.—Who drew, when he could not draw.

Mr. Swaffield.—I did.

Mr. Giles.—Who signed the draft?

Mr. Swaffield.—I did.

Mr. Giles.—Did you in the month of August, 1784, or at any other time, draw a draft payable to yourself, which you did not give credit for to the treasurer of the navy?

Mr. Swaffield.—I did not.

[The witness was directed to withdraw.]

Mr. Giles.—Now I will show your lordships the state of the treasurer's official and Bank balances, on the 31st of March, 1785, in the new account; and your lordships will see that the difference, or deficiency, amounts exactly to 6,000*l*. which was transferred from that account to the old, together with this 2,000*l*. draft, making together 8,000*l*.

Then George Fennell, esq. was again called in, and examined as follows :

Mr. Giles.—State the treasurer's balances on the 31st of March, 1785, in the second treasurer-ship.

Mr. Fennell.—It was 22,192*l*. 19*s*. 7*d*. in the Pay branch; 5,972*l*. 16*s*. 4*d*. in the Victualling branch, on the 31st of March, 1785; and 15,352*l*. 10*s*. 9*d*. in the Navy branch.

Mr. Giles.—That will amount to 43,518*l*. 6*s*. 8*d*. I shall now show what the Bank balance was on that day, and your lordships will find the difference to be 8,000*l*. deficiency.

Then the following entry was read from the new account 1784, before delivered in.



"The right honourable Henry Dundas, Bank, 1784.

"1785, April 1st.—By balance to new account, 35,513*l.* 6*s.* 8*d.*"

[The witness was directed to withdraw.]

Mr. *Giles*.—Now I propose to show your lordships another draft, drawn on the 25th May, 1785, for 2,000*l.* in favour of Mr. Swaffield, which is under precisely the same circumstances as the last.

Then the following entry was read from the new account, 1784.

"The right honourable Henry Dundas, Bank, 1784.

"1785, May 31, Swaffield, 2,000*l.*"

Then George Swaffield, esq., was again called in, and examined as follows:

Mr. *Giles*.—Look at your account with the treasurer of the navy, and state whether you received a draft, or the produce of a draft, on the 27th of May, 1785, for 2,000*l.*?

Mr. Swaffield.—On that day I received 5000*l.*

Mr. *Giles*.—Did you also receive a draft for 2,000*l.* on that day?

Mr. Swaffield.—I did not.

Mr. *Giles*.—I will show your lordships, by reading an entry in the Bank book, that 5,000*l.* was also paid to Mr. Swaffield's name, in addition to the 2,000*l.*

Then the following entry was read:

"New Account, 1784,

"31st May, 1785, Swaffield, 5,000*l.*"

Then George Swaffield, esq., was cross-examined as follows:

Mr. *Plumer*.—Whether, independent of the entries contained in the books you produce, you are able from your memory to give any account at all of the transactions of that period?

Mr. Swaffield.—I am not.

Mr. *Giles*.—Have you, since the date just referred to in May, 1785, settled your accounts at different times with the paymaster of the navy, on the account of the treasurer, without being called at any time to render an account of these two sums of 2,000*l.* and 5,000*l.*?

Mr. Swaffield.—I have not.

Mr. *Plumer*.—Were what accounts you have since settled with the treasurer of the navy, in writing?

Mr. Swaffield.—In writing; in my own hand, in this book.

Mr. *Plumer*.—Do you mean to state that you have ever settled any account yourself with the noble defendant?

Mr. Swaffield.—I do not recollect that I have.

Mr. *Plumer*.—Having stated that you sometimes drew drafts when Mr. Douglas was not in a condition to draw for himself—did you on that day, or the day before, pay a sum of 2,000*l.*?

Mr. Swaffield.—I did not.

A Lord.—You state that, occasionally, you drew drafts in your own name, though, in fact, you were only authorized by Mr. Douglas so to do—whether, when you drew those drafts, they were entered in the book as paid to the individual in whose favour you drew the draft, or whether they were entered as paid to you?

Mr. Swaffield.—I do not remember that I ever drew a draft of that kind in my own name.

A Lord.—As you did not settle your accounts personally with Mr. Dundas, with whom did you settle them?

Mr. Swaffield.—I settled them in my own books, and, of course, knew the balance at the end of every month.

[The witness was directed to withdraw.]

Mr. *Giles*.—I will now show, that on this 25th of May, 1785, there is 2,000*l.* entered to the credit of lord Melville in Drummond's house, as received of Andrew Douglas.

Then Mr. Thomas Oliver was again called in, and examined as follows:

Mr. *Giles*.—Read an entry of the 25th of May, 1785.

Mr. Oliver.—The title of the account is, "The right honourable Henry Dundas, May the 25th, 1785, received of Andrew Douglas, 2,000*l.*"

Mr. *Plumer*.—Has the witness examined this period with any book?

Mr. Oliver.—Yes, I have.

[The witness was directed to withdraw.]

Mr. *Giles*.—Having shown this additional 2,000*l.* I will now show the difference between the balances on the 31st of May, that the deficiency was 2,000*l.* more, making 10,000*l.*

Then George Fennell, esq., was again called in, and examined as follows:

Mr. *Giles*.—What were the treasurer's balances on the 31st of May, 1785, in the Navy branch?

Mr. Fennell.—The balance then was for the Navy branch, 54,773*l.* 19*s.* 11*d.*—for the Pay branch the 31st of May 1785, 19,832*l.* 16*s.* 4*d.*—and for the Victualling branch, on the 31st May 1785, 13,352*l.* 10*s.* 9*d.*

Mr. *Giles*.—Making together 87,959*l.* 7*s.* 0*d.* for the official balance. The Bank balance will be found in the banking book to be 10,000*l.* deficient.

[The witness was directed to withdraw.]

Then the following entry was read:

"New Account, 1784."

"The right honorable Henry Dundas, Bank, 1784."

"31st May 1785.—By balance to new book, 77,959*l.* 7*s.* 0*d.*"

Mr. *Giles*.—Your lordships observe there



is just 10,000*l.* less than the official balance. I will proceed to show your lordships that this deficiency continued the same in June and July; but it will here be necessary to introduce another account which was opened at the Bank. The act of parliament for regulating the office of the treasurer of the navy passed in July 1785, and accordingly we find that there was at that period an account opened by Mr. Douglas for lord Melville at the Bank. I mention this particularly, because it is a circumstance that had escaped notice for a considerable time after this matter was first inquired into, and some documents have been incorrectly drawn up, owing to the clerks in the Navy-pay-office not being aware that this account had been so opened by Mr. Douglas. I proceed to show your lordships that the deficiency continued, to the month of July, to be 10,000*l.*

Then *George Fennell*, esq., was again called in, and examined as follows:

*Mr. Giles*—State the official balance on the 31st July 1785.

*Mr. Fennell*—For the Navy branch, 31,602*l.* 14*s.* 11*d.*—For the Pay branch, the 31st of July 1785, 6,200*l.*

*Mr. Giles*—For the Victualling branch?

*Mr. Fennell*—The 31st July 1785, 13,752*l.* 10*s.* 9*d.*

*Mr. Giles*—Making together, 51,555*l.* 5*s.* 8*d.*

[The witness was directed to withdraw.]

Then *Mr. John Gimingham* was again called in, and examined as follows:

*Mr. Giles*—Do you know whether these are the banking books of the treasurer of the navy?

*Mr. Gimingham*—They are both the treasurer's books.

[The witness was directed to withdraw.]

*Mr. Giles*—One of them is the first book, in which the account of July, 1785, was opened; and the other is confined to the new account.—That the attention may not be confounded by the several bank accounts we are obliged to refer to, I wish to state them distinctly to your lordships, and to observe, that the first account opened by lord Melville at the Bank, is called the old account, and it relates to the first treasurership only. Then came the second treasurership, and an account was immediately opened with that, which is called the new account. The act of parliament passed in July, 1785, and then another concurrent account was opened for the second treasurership, and was called the act of parliament account. In January, 1786, *Mr. Trotter* came into office as paymaster, and then another act of parliament account was opened, which was called the act of parliament new account. These are the only Bank accounts to which your lordships attention

will be called. At present, in order to shew the treasurer's Bank balance on the 31st July, 1785, we must refer to the concurrent accounts, viz. the new account and the act of parliament account. The adding of the balances of these two accounts together, will give the real Bank balance of the second treasurership on that day.

Then the following entry was read from a book entitled "New Account, right honorable Henry Dundas."

"Bank, 1785,

"July 30th, 1785—By balance to new account, 13,026*l.* 10*s.* 8*d.*"

Then the following entry was read from a book entitled "The right honorable Henry Dundas with the Bank, by act of parliament, dated July 1st, 1785."

"July 30th—By balance to new account, 28,528*l.* 15*s.* 0*d.*"

*Mr. Giles*—Adding these together, your lordships will find it amount to 41,555*l.* 5*s.* 8*d.* and that, deducted from the official balance, which was 51,555*l.* 5*s.* 8*d.* just leaves 10,000*l.* deficiency in July, 1785. The deficiency continued the same in August and September, and I mean to show that, in October, 1785, this deficiency was reduced to 9,000*l.* by a payment made, by placing 1,000*l.* due to lord Melville on account of his salary, to his credit in the public account at the Bank.

Then *Mr. John Davis* was called in, and being sworn, was examined as follows:

*Mr. Giles*—Did you pay or transfer the sum of 1,000*l.* to the account of lord Melville as treasurer of the navy, at the Bank, in the month of October, 1785?

*Mr. Davis*—I made a draft for 1,000*l.* payable to the right honorable Henry Dundas; it was for his salary as treasurer of the navy, for the preceding quarter.

*Mr. Giles*—What situation did you hold in the Navy-pay-office at that time?

*Mr. Davis*—At that time I was assistant to the then cashier of the navy.

*Mr. Giles*—What was his name?

*Mr. Davis*—John Slade; the public cash was deposited in our joint names, and therefore I drew the draft myself.

*Mr. Giles*—Did you make any payment to the amount of 1,000*l.*?

*Mr. Davis*—I did, on the 6th of October, 1785.

*Mr. Giles*—On what account did you make that payment?

*Mr. Davis*—I made it on account of the right honorable Henry Dundas's salary, for the preceding quarter.

*Mr. Giles*—To whom, or to what account did you make that payment?

*Mr. Davis*—I will look at another book and inform you.

*Lord Chancellor*—Is that book in your own hand-writing?



Mr. *Davis*.—It is all in my own handwriting. The draft was drawn payable to Mr. Dundas, but it was given to Mr. Douglas.

[The witness was directed to withdraw.]

Mr. *Giles*.—We will show by the banking-book that that draft was placed to the credit of lord Melville's new account in the banking-book.

Then the following entry was read:

"New account, right honourable Henry Dundas.

"October 6, 1785, Slade and Davis 1,000*l*."

Mr. *Giles*.—Now I proceed to shew that this payment having been made to the new account on the 6th of October 1785, it had the effect of reducing his deficiency to 9,000*l*. on that account.

Then *George Fennell*, esq., was again called in, and examined as follows:

Mr. *Giles*.—State the treasurer's balance on the 31st of October, 1785.

Mr. *Fennell*.—The treasurer's balance in the Navy branch, on the 31st of October, 1785, was 95,133*l*. 10*s*. for the Pay branch, on the 31st of October, 1785, it was 31,213*l*. 16*s*. 11*d*.—for the Victualling branch, on the 31st of October, 1785, it was 19,712*l*. 10*s*. 9*d*.

Mr. *Giles*.—These sums make altogether 146,059*l*. 17*s*. 8*d*.—I will now show your lordships that the two Bank balances, viz. the balance of the new account and that of the act of parliament account, amounted to 137,059*l*. 17*s*. 8*d*. just 9,000*l*. less.

Then the following entry was read:

"New account right honourable Henry Dundas, Bank, 1785."

"1785, October 31st,—By balance to new account, 9026*l*. 10*s*. 8*d*."

Then the following entry was read:

"The right honorable Henry Dundas with the Bank, by act of parliament, dated July 1st, 1785.

"31st October, 1785,—By balance to new account, 128,033*l*. 7*s*. 0*d*."

[The witness was directed to withdraw.]

Mr. *Giles*.—Your lordships will find they make together 137,059*l*. 17*s*. 8*d*. The Bank balance being exactly 9,000*l*. less than the official balance. This deficiency continued in that state during the month of November; but, as it is not worth while to trouble your lordships with evidence of that, we will go to the deficiency as it existed on the last day of December 1785, after Mr. Douglas's death. He died in December 1785, and the deficiency then continued to be 9,000*l*. on the second treasurership, and 1,600*l*. on the old treasurership, making together the sum of 10,600*l*. which, it will be hereafter proved to your

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lordships, lord Melville confessed to be a deficiency due from himself. I will prove it in November, because it appears that the Bank balance, owing to Mr. Douglas's death, was not settled on the 31st of December.

Then *Archibald Douglas*, esq. was again called in, and examined as follows:

Mr. *Whitbread*.—When did your father die?

Mr. *Douglas*.—Some day in December, 1785, to the best of my recollection, but I cannot ascertain the day.

[The witness was directed to withdraw.]

Mr. *Whitbread*.—I believe it might be precisely ascertained to be the 19th of December. Owing to another paymaster not being appointed, the balance could not be settled at the end of December, but it remained the same as it was at the end of November.

Then *George Fennell*, esq. was again called in, and examined as follows:

Mr. *Giles*.—State what was the treasurer's balance of the Navy branch on the 30th of November, 1785.

Mr. *Fennell*.—The treasurer's balance on the Navy branch on the 30th of November, 1785, was 59,584*l*. 2*s*. 1*d*.; for the Pay branch on the 30th of November, 1785, it was 2,513*l*. 16*s*. 11*d*.; for the Victualling branch on the 30th of November, 1785, the balance was 21,712*l*. 10*s*. 9*d*.

Mr. *Giles*.—These sums make together 83,810*l*. 9*s*. 9*d*.

Now read the Bank balances?

Then the following entry was read:

"The right honourable Henry Dundas with the Bank, by act of parliament July 1st.

"November 30th, 1785.—By balance to the new account 65,783*l*. 19*s*. 1*d*."

Mr. *Giles*.—The balance in the other account continued the same; there was no entry either to the credit or the debit in the month of November.

The following entry was read:

"Banking book new account, 1785."

"October 31st, 1785.—To balance from old account, agreed John Betworth, 9,026*l*. 10*s*. 8*d*."

Mr. *Giles*.—Adding these sums together, they amount to 74,810*l*. 9*s*. 9*d*.; and, deducting that from the official balance, there is a deficiency of exactly 9,000*l*. the same as it was the preceding month.

[The witness was directed to withdraw.]

Then *Osborne Standert*, esq. was again called in, and examined as follows:

Mr. *Giles*.—You are a clerk in the Navy office.

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Mr. Standert.—Yes.

Mr. Giles.—When the treasurer of the navy is to make a transfer from one account to the other, does he not do that by the direction of the navy board?

Mr. Standert.—Yes.

Mr. Giles.—Is he allowed so to do, without directions being given for that purpose?

Mr. Standert.—No.

Mr. Giles.—Were any directions given for transfers by the navy board to the treasurer of the navy, for 2,000*l.* on the 13th of March, 1784; or for 1,000*l.* on the 24th of April, 1784; or for 1,500*l.* on the 7th of June, 1784; or for 1,500*l.* on the 1st of March, 1785?

Mr. Standert.—I cannot tell from memory.

Mr. Giles.—Have you taken any, and what means to inform yourself, whether such orders were or were not given?

Mr. Standert.—I have referred to those bills by which the transfers were made.

Mr. Giles.—Do you mean by which all transfers were made during that treasurer-ship?

Mr. Standert.—Yes.

Mr. Giles.—Do you find any authority whatever, for the treasurer having made the transfers that have just now been stated to you?

Mr. Standert.—The bills only are the authority for such transfers.

Mr. Giles.—Examine those bills, and see if you find any authority for a transfer of the sum of 2,000*l.* on the 13th of March, 1784?

Mr. Standert.—The first is, 10,000*l.*; the second is 10,000*l.*; the third is 20,000*l.*; the fourth is 10,000*l.*; the fifth is 5,000*l.*; the sixth is 5,000*l.*; the seventh is 5,000*l.*; the eighth is 5,000*l.*; the ninth is 5,000*l.*; the tenth is 10,000*l.*; the eleventh is 5,000*l.*; and the twelfth is 5,000*l.*

Mr. Giles.—Are there any more bills of the same nature, authorising transfers during that period?

Mr. Standert.—Not from one treasurer-ship to the other.

Then Osborne Standert, esq. was cross-examined, as follows:

Mr. Plumer.—Explain what you mean by transfers made by bill?

Mr. Standert.—Sums that had been received by the treasurer for the time being, and paid over to the ex-treasurer to carry on the service during his treasurer-ship.

Mr. Plumer.—Then I understand from you, that the account of the ex-treasurer and the treasurer in office, are kept distinct?

Mr. Standert.—They are so.

Mr. Plumer.—Do you mean, speaking of the transfers, that when there was a transfer from one account to the other, that was directed by the navy board?

Mr. Standert.—Yes; that it was directed by the navy board.

Mr. Plumer.—Each head of service is also

kept distinct by the ex-treasurer, or by the treasurer in office?

Mr. Standert.—Exactly so.

Mr. Plumer.—Is any direction given by the board with respect to the removal of any money from the Bank for any purpose?

Mr. Standert.—Never.

Mr. Plumer.—The transfer, from one place to another place, is left to the discretion of the treasurer, and not under the direction of the board?

Mr. Standert.—Undoubtedly not.

Mr. Plumer.—Was there any transfer from one account to the other, at the period respecting which you have been interrogated, in March, April, and June, 1784?

Mr. Standert.—I find one transfer of 10,000*l.* was made in March, 1784, from the new account to the old account.

Mr. Plumer.—Was that a transfer directed by the board?

Mr. Standert.—Yes; that 10,000*l.* was expressly received by the treasurer in his second treasurer-ship, purposely to pay over to the treasurer in his first treasurer-ship.

Mr. Plumer.—Was that under the regular authority of the navy board?

Mr. Standert.—Yes.

Mr. Plumer.—Is there any unauthorised transfer in the same month, from one account to the other?

Mr. Standert.—I do not know of any.

Mr. Giles.—It must appear by the Bank book, whether there was any transfer at all made.

Mr. Plumer.—This is the witness they have called for the purpose of proving unauthorized transfers from one account to the other; I am only pursuing it, to show my direct negative to that fact.

Mr. Whitbread.—We only called this witness to show, that no authority did exist for one transfer being made; we did not call him to show, that no authority existed for transfers being made.

Mr. Plumer.—I understood him to have been interrogated, first, as to the course of the office, and the mode in which transfers when duly made were entered; and then I meant to show, in point of fact, that in certain months no authority was given for a transfer from one account to the other.

Mr. Whitbread.—We have proved that a specific transfer was made from one treasurer-ship to the other on the 13th of March 1784. We call the witness to show that no authority existed for that particular transfer, not calling upon him to show whether other transfers had been made.

Mr. Plumer.—As I understand the evidence, the honourable managers have proved no such thing as they have stated, viz. a transfer from one treasurer's account to another account. What they have proved is a transfer at the Bank. All I wish is, to have from this witness a clear and distinct statement of what are the sorts of accounts in which alterations



are never made from the one to the other without authority, and to show that that is the total amount, not the place of deposit, which has confused the two questions. The place of deposit is not interfered with by the navy board at all; it is to show that the total amount of the balances of the ex-treasurer and the treasurer in office, is never varied at all without authority. Is not that so?

Mr. Standert.—Yes; that is perfectly clear.

Mr. Plumer.—Whether you know of any alterations, in the month of March and the other two months, from the old account to the new account, from the ex-treasurer to the new treasurer?

Mr. Giles.—The witness has never seen those accounts; he is not in the Bank but the Navy-office.

Mr. Plumer.—If the witness will say that this is not within his department, I am quite satisfied. It would not be proper for me to inquire of him. I wished it to be distinctly understood, what the sort of transfer he has spoken of, which requires the interference of the board, was.

Mr. Whitbread.—A short question will put an end to that. Do you belong to the Navy-pay-office at all?

Mr. Standert.—I do not.

Mr. Plumer.—Do you belong to the Navy-office?

Mr. Standert.—Yes.

Mr. Plumer.—Is it your particular office to control the treasurer's accounts?

Mr. Standert.—It is.

Mr. Plumer.—Does it lie within your own knowledge, if there is any transfer from one account to the other, in consequence of your department?

Mr. Standert.—It would appear in the account of each, the sum transferred and the sum received in the other account.

Mr. Plumer.—Would it come within your official knowledge if such a transfer had, at any time, been made?

Mr. Standert.—It would.

Mr. Plumer.—Did any such transfer take place, on the 13th of March, 1784, from one account to the other account?

Mr. Standert.—The day on which the actual transfer was made I cannot speak to; but the document by which the transfer was made, passed the office on the 8th of March, 1784.

Mr. Plumer.—That is one that is authorized by the board.

Mr. Standert.—It was.

Mr. Plumer.—Do you know of any other transfer from one account to the other, in the course of the same month?

Mr. Standert.—I do not.

Mr. Plumer.—If there had been any transfer from one account to the other, should you have known it?

Mr. Standert.—In the regular course of business, I should.

Mr. Plumer.—Are you in possession of any

documents to know whether, in point of fact, there appears to have been any variation of the accounts in that month—any transfer from one account to the other?

Mr. Giles.—In what accounts does the learned counsel mean?

Mr. Plumer.—I mean just exactly the account we have been speaking of all along; the account of the new treasurership to the ex-treasurership.

Mr. Standert.—The express sum, which I have mentioned before of 10,000*l.* is the only article, that I know of, that was transferred in that way, and the only transfer that I know has been made.

Mr. Plumer.—I wish to put the same question, with respect to the other two months, April and June, 1784, and the month of March, 1785?

Mr. Standert.—I have no document, of April or June, 1784, that shows any transfer at all.

Mr. Plumer.—Have you any, relative to March, 1785?

Mr. Standert.—I have a document of the 11th of March, 1785—5,000*l.*

Mr. Whitbread.—What we prove, was on the first of March.

Mr. Plumer.—Do you know, in point of fact, whether any transfer, in either of those months, from one account to the other, did take place?

Mr. Standert.—I cannot tell by my memory.

Mr. Plumer.—Can you, by referring to any books, ascertain that fact?

Mr. Standert.—Referring to the treasurer's receipts and payments, which were signed by Mr. Douglas, would show it—the certificate books.

Mr. Plumer.—Specify the book in which that is to be found?

Mr. Standert.—It would have appeared in the books Mr. Fennell lately had; the copies of those books are in the hands of the solicitor for the managers.

Mr. Plumer.—Supposing a transfer from the Bank account of the ex-treasurer to the Bank account of the new treasurer, or *vice versa*, would that be a subject upon which any direction would be required from the navy board?

Mr. Standert.—Certainly not.

Mr. Giles.—Does the witness mean to represent that no transfer was made at the periods that have been mentioned, from the second treasurership to the first, without authority from the navy board?

Mr. Standert.—I can only speak from the authorities which lie before me.

Mr. Giles.—May there not, for any thing you know, have been a transfer made from the second treasurership to the first, without any authority from the navy board?

Mr. Standert.—I think if there had been, and those transfers had been regular, I must have known it.

Mr. Giles.—I am asking concerning irregular and unauthorized transfers?



Mr. *Standert*.—Those I cannot speak to.

Mr. *Giles*.—When you are speaking of transfers, are you to be understood to be speaking of transfers of the Bank account of the treasurer at the Bank, to the Bank account of the ex-treasurer, or the total account of one treasurer to the total account of the other.

Mr. *Standert*.—We know of no transaction at the Bank.

A *Lord*.—When you speak of a transfer from the new account to the old account, do you mean by that, the Bank carrying part of the credit which stood to the new account to the credit of the old account?

Mr. *Standert*.—When money is required in an old treasurership, to carry on the service an application is made to the navy board for a sum to do so—the navy board write to the treasurer of the navy to solicit a certain sum for that purpose—he takes that solicitation to the treasurer, and upon that document the treasury issue the precise sum to the treasurer for that purpose—when that is done, he certifies to the navy board that such a sum is received for such a purpose, upon which those bills are made out in the name of the ex-treasurer, and assigned in the name of the treasurer for the sum; therefore it is only a sum passing through the medium of the present treasurer to the late treasurership, to carry on the service of that late treasurership.

A *Lord*.—Then if the treasurer for the time being should draw upon the Bank by his paymaster the sum of 1,000*l.* and that should come into the hands of his paymaster, and should afterwards, by that paymaster or any other, be paid to the old account, whatever that is in effect, would you either call it a transfer or an unauthorized transfer, whatever it be in effect?

Mr. *Standert*.—We should call nothing a transfer but what appears upon the face of the treasurer's account.

A *Lord*.—Though the thing be the same in effect, you give a different name to it.

Mr. *Giles*.—My lords, we have, on the part of the commons, shown your lordships that the deficiency, which was originally 23,000*l.* has, by the means which I will not now detail, but which we have given in evidence, been reduced from 23,000*l.* to 10,600*l.* that is to say, 9,000*l.* on the new account, and 1,600*l.* on the old. I have stated to your lordships that that 10,600*l.* remaining deficiency was confessed by lord Melville to be his deficiency, and not the deficiency of his paymaster; and, to prove that fact, the managers purpose, in addition to the evidence your lordships have already received, to read a pamphlet published by lord Melville.

Adjourned to the Chamber of Parliament.

#### SIXTH DAY.

Monday, May 5, 1806.

The Lords and others came from the

Chamber of Parliament into Westminster-hall, in the same order as on the first day of the trial.

Lord *Chancellor*.—Gentlemen, Managers for the Commons, you may now proceed with your evidence, and the lords will be pleased to give their attention.

Mr. *Giles*.—My lords, on Saturday I stated to your lordships, that the differences between the balances had been reduced to 10,600*l.* being 9,000*l.* upon the account of the second treasurership, and 1,600*l.* upon that of the first. I find by the minutes, however, that I did not prove that this continued to be the exact difference between the official and Bank balances of the old treasurership to so late a period as I thought. I did not then carry it lower than the 31st of March, 1785; whereas, the last settlement, prior to Mr. Douglas's death, which happened in December, 1785, was in the September preceding it. I will now supply the defect, and prove the differences between the official and Bank balances of the first treasurership, on the 30th September, 1785.

Then *George Fennell*, esq. was again called in, and examined as follows:

Mr. *Giles*.—What was the treasurer's balance on the old account of the ex-treasurership, September, 1785?

Mr. *Fennell*.—For the Navy branch, 701*l.* 7*s.* 11*d.*—for the Pay branch, 4,556*l.*—for the Victualling branch, 851*l.* 4*s.* 4*d.*

Mr. *Giles*.—Making together 6,108*l.* 12*s.* 3*d.* The Bank balance will appear in the banking book.

Then the following entry was read from a book before delivered in:

"30th September, 1785. To balance from old account, 4,508*l.* 12*s.* 3*d.*"

[The witness was directed to withdraw.]

Mr. *Giles*.—Leaving, as I stated, a deficiency of 1,600*l.* upon the old treasurership. I have now, my lords, traced the deficiencies to the latest period preceding Mr. Douglas's death, and shown the difference of the balances upon the first treasurership to have been 1,600*l.* and upon the second treasurership 9,000*l.* In order to prove lord Melville's acknowledgment, that this 9,000*l.* and 1,600*l.* (amounting together to 10,600*l.*) was a deficiency due from him, I intended to have produced some evidence, with which it will not be necessary to trouble your lordships, because a witness must shortly be called, who will most satisfactorily prove that fact. In the mean time, I wish to show your lordships what the balance of lord Melville's account, at Messieurs Drummond's, was on the 25th of May, 1785, when the 2,000*l.* draft, drawn in favour of Swaffield, and denied by Swaffield to be paid to him, was paid into Messrs. Drummond's by Mr. Douglas.



Then Mr. *Thomas Oliver* was again called in, and examined as follows :

Mr. *Giles*.—Refer to the ledger you produced before their lordships, and state what was the balance of Mr. Dundas's account, on the 25th of May, 1785?

Mr. *Oliver*.—The balance on that day appears to be 2,547*l.* 13*s.* 10*d.* against my lord Melville.

Then Mr. *Thomas Oliver* was cross-examined, as follows :

Mr. *Plumer*.—Turn again to that entry of the 25th May, 1785.—You represented what was the balance of the account current of lord Melville on that day. Does there appear upon the book any balance struck that day, or is it a balance that you struck now upon the account current?

Mr. *Oliver*.—I make it from calculation, by casting up the account.

Mr. *Plumer*.—Do you make it from the calculation of an open account current.

Mr. *Oliver*.—Yes.

Mr. *Whitbread*.—Turn to the entry of the 4th of March, 1784, of money paid on lord Melville's account, and by whom?

Mr. *Oliver*.—"March 4th, 1784. By cash received of Andrew Douglas, esquire, 600*l.*"

Mr. *Whitbread*.—Refer to an entry of the 27th of May, for the same purpose.

Mr. *Oliver*.—"May 27, received of ditto, [that is, Andrew Douglas] 500*l.*"

Mr. *Whitbread*.—Refer to an entry of the 28th of the same month.

Mr. *Oliver*.—"May the 28th, ditto, 500*l.*"

Mr. *Whitbread*.—Refer to an entry of the 14th of August.

Mr. *Oliver*.—"August the 14th of ditto, 1,000*l.*"

Mr. *Whitbread*.—Does "ditto," in all these entries you have read, refer to Andrew Douglas before named?

Mr. *Oliver*.—They do.

Mr. *Whitbread*.—Turn to an entry of the 8th of January, 1785.

Mr. *Oliver*.—"January the 8th, 1785. By cash received of Andrew Douglas, 1,000*l.*"

Mr. *Whitbread*.—Turn to an entry of the 17th of March, in the same year.

Mr. *Oliver*.—"March the 17th, of ditto, [meaning Andrew Douglas] 1,000*l.*"

Mr. *Whitbread*.—Turn to an entry of the 19th of May, in the same year.

Mr. *Oliver*.—"May 19th of ditto, 1,000*l.*"

Mr. *Whitbread*.—What does "ditto" mean to express in that entry?

Mr. *Oliver*.—Of Andrew Douglas.

Mr. *Whitbread*.—The entry of the 25th of May, which is the succeeding and last entry, has been already read to your lordships; but I wish it to be read again, to complete the year.

Mr. *Oliver*.—"May the 25th, of Andrew Douglas, 2,000*l.*"

Mr. *Whitbread*.—There are three entries in

1783, which precede all the entries that we have had read to-day out of the other ledger.

Mr. *Plumer*.—My lords, the witness stopped with reading an entry of the 25th May, 1785. I wish that the two next entries in the same page and in the same account may be read.

Mr. *Oliver*.—"October the 4th, Mansfield on Coutts, per Newbigging, 2,000*l.*—December the 29th, Simpson on the Bank, per Davison, 3,600*l.*"

Mr. *Whitbread*.—Turn to an entry of the 7th April 1783.

Mr. *Oliver*.—"April 7th 1783, received 500*l.*"

Mr. *Plumer*.—It does not specify from whom received?

Mr. *Oliver*.—It does not.

Mr. *Whitbread*.—Turn to an entry of the 30th of June 1783.

Mr. *Oliver*.—"June 30th 1783, of Andrew Douglas, 175*l.* 16*s.* 4*d.*"

Mr. *Whitbread*.—Turn to an entry of the 30th of December, of the same year.

Mr. *Oliver*.—"December the 30th, received 100*l.*"

Lord Chancellor.—Is that the whole of the entry?

Mr. *Oliver*.—Yes.

A Lord.—With regard to the entry on the 7th of April 1783, and the 30th of December 1783, which are marked in the first instance simply "received 500*l.*" and in the other entry "received 100*l.*" from whom were they received?

Mr. *Oliver*.—It is presumed immediately from lord Melville, or from a messenger immediately from him; that is the usual way of making the entries.

A Lord.—Does your presumption of that fact appear any how upon the face of the book?

Mr. *Oliver*.—It does not appear only "received."

A Lord.—Is there any entry with the mark of the letter P. among those entries.

Mr. *Oliver*.—It would not appear here—that would appear in the waste book.

Mr. *Whitbread*.—We propose now to call Mr. Archibald Douglas, who has been before your lordships.

[The witness was directed to withdraw.]

Then Archibald Douglas, esquire, was again called in, and examined as follows :

Mr. *Whitbread*.—You have stated that your father, Andrew Douglas, died in December 1785; were you in London at the time of your father's death?

Mr. *Douglas*.—I was.

Mr. *Whitbread*.—How late, previous to your father's death, did you see him?

Mr. *Douglas*.—I reached London from Scotland on the Thursday, late in the day, and my father died on the Sunday following.

Mr. *Whitbread*.—Were you executor to your father?



Mr. Douglas.—I was acting executor to my father.

Mr. Whitbread.—Was any claim made upon you as executor to your father, for any balance due upon the navy pay account?

Mr. Douglas.—Yes, there were.

Mr. Whitbread.—What were those claims, and made by whom?

Mr. Douglas.—I cannot say, expressly, that the claim was made upon me.

Mr. Whitbread.—Had you any interview with lord Melville subsequent to your father's death?

Mr. Douglas.—Yes, I had.

Mr. Whitbread.—Can you remember what passed at that interview between lord Melville and yourself.

Mr. Douglas.—At the distance of twenty, or twenty-two years, I cannot be very positive; but, to the best of my recollection, knowing that there was a balance due in the treasurership of lord Melville for exchequer fees, I thought it my duty to wait upon lord Melville, to ask him to whom I was to pay such sum or sums as were due in his treasurership.

Mr. Whitbread.—What answer did lord Melville give you to that inquiry?

Mr. Douglas.—To the best of my recollection, lord Melville said he would let me know, or I should soon know to whom I was to pay it.

Mr. Whitbread.—To whom, in fact, were those sums so due transferred? and does that appear from any writing?

Mr. Douglas.—I do not know that it does; I will state from memory to whom I think I paid them.

Mr. Whitbread.—Was any account in writing made by you to whom that balance was paid?

Mr. Douglas.—The mode by which I paid the balance, as well as I recollect, was by my accompanying Mr. Trotter, who, I believe was appointed to succeed my late father, to the house of Messieurs Coutts, the bankers, and the mode of paying Mr. Trotter, as far as I recollect, was by transferring some large sums, from my credit to that of Mr. Trotter, in the books of Messieurs Coutts.

Mr. Whitbread.—Look at this receipt; upon what occasion was that given you?

Mr. Douglas.—It appears to me to be signed Henry Dundas. It was given to me as the executor of Andrew Douglas, for the sum of four thousand four hundred and seventy-five pounds, four shillings and nine-pence, "being the amount of a balance remaining in his hands, due me upon account of twelve thousand pounds advanced him in the course of my two treasurerships to pay exchequer fees, &c. per account also received." Signed "Henry Dundas."

Mr. Whitbread.—Whether any further claims were made upon you, and by whom, as acting executor of your father?

Mr. Douglas.—I do not recollect any further claims being made upon me. My father was due balances.

Mr. Whitbread.—Where were those balances?

Mr. Douglas.—There was a balance due in the treasurership of the late lord Mendip.

Mr. Plumer.—I presume the witness has no knowledge himself of what balances existed either to lord Mendip, lord Melville, or any body else, but what appears upon the books; and then he is only speaking to the contents of books which your lordships have determined not to be evidence.

Mr. Whitbread.—I presume the question put by me was, whether any further claim was made upon him on account of the ex-paymastership of his late father, I meant to confine myself entirely to the treasurership of lord Melville.—Was any further claim made upon you as the executor of your father on account of lord Melville's treasurership?

Mr. Douglas.—None, as far as I recollect.

Mr. Whitbread.—Or ever since?

Mr. Douglas.—Nor ever since.

[The witness was directed to withdraw.]

Mr. Whitbread.—My lords, the commons here leave, for the present, the evidence they have to adduce, as it respects the first and tenth articles. It is impossible for them to say that they entirely close that evidence, because the whole matter is so connected, that it may be necessary in the course of the trial, to bring some other evidence to these two articles; but, for the purpose of saving your lordships' time in hearing the evidence to be adduced in support of the further articles, I beg now to refer your lordships to the fifth article, exhibited by the commons, against lord viscount Melville: wherein it is stated that the defendant, for some corrupt purposes, other than navy purposes, took the sum of 10,000*l.* for his own use.

I again offer myself as a witness to your lordships; and I swear, that on the eleventh day of June, one thousand eight hundred and five, I heard lord Melville declare, with reference to another sum of ten thousand pounds, respecting which I deposed on the other day, that he did at a time subsequent to the time at which he possessed himself of the first ten thousand pounds, possess himself of another sum, nearly to a similar amount; and I understood in substance, that lord Melville said that he would not reveal the application of that money, any more than of the first ten thousand pounds: and from the same motives. This was said in the presence of hundreds of persons, and I propose, on a future day, to call another witness to confirm the testimony I have given.

Then Samuel Whitbread, esq., was cross-examined as follows:

Mr. Plumer.—I presume the honourable manager did not, upon this subject, any more than the other, at the time, take any note or minute in writing of what passed?

Mr. Whitbread.—I certainly at that time, took a note of the substance of all that lord Melville said, but not of the exact words.



Mr. *Plumer*.—The speech of lord Melville\* in the house took up a considerable time?

Mr. *Whitbread*.—Yes, upwards of two hours, I dare say.

Mr. *Plumer*.—Could you undertake to repeat, by heart, any passages that made favourably for lord Melville, as well as those that you have now given to the Court?

Mr. *Whitbread*.—I have repeated, by heart, certain words which I have sworn that lord Melville spoke; any other particular words of his speech I am not quite sure that I could repeat: I am now only swearing to the substance of what lord Melville said.

Mr. *Plumer*.—Can you repeat the substance of any other part of lord Melville's speech which was favorable to lord Melville?

Mr. *Whitbread*.—If the learned counsel will point my attention to any particular passage of that speech, I will tell him whether I can repeat the substance of it or not.

Mr. *Plumer*.—Did the noble lord, in the course of his speech, with respect to the sum in question, negative the appropriation of that sum, the same as of the other, to his own private use?

Mr. *Whitbread*.—I understood him to do it exactly in that way, as with regard to the other sum of 10,000*l*.

Mr. *Plumer*.—Do you recollect that the noble lord at the same time, in the most positive and explicit manner, did deprecate any appropriation of these sums to his own private use, or Mr. Trotter's?

Mr. *Whitbread*.—I do not think that he did, in precise and explicit terms, negative that fact.

Mr. *Plumer*.—Can you, by referring to the notes you took at that time, be able to speak with more positiveness and precision upon that point of the subject?

Mr. *Whitbread*.—I do not think that I could speak with more positiveness and certainty.

Mr. *Plumer*.—Was no note taken upon that subject?

Mr. *Whitbread*.—Yes; but when expressions are equivocal, it is difficult by any note, exactly to give the precise meaning the words are intended to convey.

Mr. *Plumer*.—What was that equivocal expression which was used upon that occasion?

Mr. *Whitbread*.—I do not recollect the precise words, but without recollecting the precise words, one may have a recollection that there was an equivocal sense pervading several sentences.

Mr. *Plumer*.—Endeavour to recollect the substance of what was said in that part of the noble lord's speech that made that impression.

Mr. *Whitbread*.—The impression intended to be conveyed by that part of the noble lord's speech, to which I presume the learned counsel means to refer, the impression intended to have been conveyed, I apprehend to have

been—that he had not directed Mr. Trotter to make use of any public money for his private advantage. With regard to the permission, which he had given to Mr. Trotter, I think the words were pretty precisely, that he had given Mr. Trotter such permission.

Mr. *Plumer*.—Permission to do what?

Mr. *Whitbread*.—To place the public money at other places than the Bank, and also to make use of a part of it for his own advantage.

Mr. *Plumer*.—I beg to repeat my questions—whether the noble lord did not, in the most explicit and positive terms, deny that he had either given any permission, or had any knowledge of the public money being laid out to any purposes of private emolument or profit, either for himself or Mr. Trotter?

Mr. *Whitbread*.—I wish the learned counsel to interpret what he means by 'laid out'. I understood the noble lord to say, or at least implied from it, that he had permitted Mr. Trotter to place the public money at other places besides the bank, for his own private purposes, but with regard to other places, that he did not do any such thing.

Mr. *Plumer*.—I beg to ask the honorable manager, whether he does not distinctly recollect, that the averment of the noble defendant upon that subject of placing it was, that he had given no other permission, but to remove the money from the Bank to a private bank, for the convenience of appropriating it to the public service?

Mr. *Whitbread*.—Certainly one of the reasons given by the noble lord, was, that he had allowed the money to be removed to a private banker's for official convenience; but it did not appear to me, that that was the only reason.

Mr. *Plumer*.—Then having said one of the reasons assigned by the noble lord, was, that it might be there for the public convenience, did he give any other reason besides?

Mr. *Whitbread*.—Yes; I understood for the emolument of Mr. Trotter: and the noble lord described the manner in which he thought that emolument had accrued, namely, by interest paid by Mr. Coutts to Mr. Trotter for lodging that money.

Mr. *Plumer*.—Be so good as refresh your memory upon the subject, and say whether the sole reason given by the noble defendant was not, that the sole object of removing it from the Bank was for public convenience; but at the same time he did suspect or believe, that an advantage had accrued to Mr. Trotter from that act, which was not done for his advantage, but for public convenience?

Mr. *Whitbread*.—That was not the way in which I understood it altogether.

Mr. *Plumer*.—Whether you have refreshed your memory since you heard the speech, by a reference to what was stated on Saturday, as intended to be read in evidence, the substance of the speech delivered?

Mr. *Whitbread*.—I have not looked at the

\* See it p. 560.



pamphlet in question since; I have been otherwise most laboriously occupied.

Mr. *Plumer*.—Whether the noble defendant did not in express terms say, that he did solemnly assert before that house, that he never knew that Mr. Trotter had drawn any money for the purposes of private emolument, in manifest evasion of the act?

Mr. *Whitbread*.—I am speaking to the speech and not to the pamphlet. The pamphlet, which I have read more than once, does not in every part of it exactly correspond with the speech as delivered by the noble defendant, in the house of Commons, to the best of my recollection and belief. Whether those precise words were uttered in the house of Commons, it is impossible for me to say; but, whether they were, or not, the context of all he said was to make the impression upon my mind, which I have had the honor of stating to the Court.

Mr. *Plumer*.—I beg to have a precise answer, whether those words, or to that effect and substance, were used by the noble defendant? I will repeat them again: "I never knew that Mr. Trotter had drawn any money for private emolument, in manifest evasion of the act."

Mr. *Whitbread*.—I can give no other answer than I have heretofore done, and I hope that is perfectly satisfactory to the Court, that I am not speaking to the words of that pamphlet, but to the words of the speech, without recollecting precise parts of it.

Mr. *Plumer*.—I have not made use of the word pamphlet, but I am asking whether, in substance, the noble defendant did not imply to the effect I am stating.

Mr. *Whitbread*.—I do not recollect the precise words, nor do I think that the very substance of those words was uttered in any precise form by the noble lord.

Mr. *Plumer*.—Whether you mean not only to negative the precise expression I have stated, but to negative also the substance?

Mr. *Whitbread*.—I do not mean to negative the substance altogether, of lord Melville's criticism upon what the words manifest evasion meant; the substance of the speech was what I have given to your lordships; the words themselves I do not recollect.

Mr. *Plumer*.—I am not answered yet. I wish to know whether in words and in substance, and also to the effect, of what I stated just now was or was not made use of by the noble lord?

Mr. *Whitbread*.—Not to that precise effect; to an effect very nearly similar.

Mr. *Plumer*.—I shall be obliged to you if you will state, what was the averment upon that subject, as near as you can recollect?

Mr. *Whitbread*.—The averment upon that subject I took to import, that he had not allowed Mr. Trotter to do that, to the extent to which it had been done.

Mr. *Plumer*.—Am I to understand your recollection to be, that he allowed it to any extent?

Mr. *Whitbread*.—Undoubtedly.

Mr. *Plumer*.—Do you mean that he allowed it in any other respect, than as a benefit might arise to him, from depositing it for the convenience of the public service, at another bank.

Mr. *Whitbread*.—The noble lord had first of all contended that the act was not evaded, and therefore there comes a question—what was an evasion of the act? not a manifest evasion of the act, according to the construction of the noble lord; but, according to the construction I put upon it, it was in manifest evasion of the act.

Mr. *Plumer*.—Whether the noble lord admitted that he had ever permitted Mr. Trotter to derive any private benefit from the public money, except the benefit arising from a deposit made at a private banker's, for the purpose of official convenience?

Mr. *Whitbread*.—I understood lord Melville to say, for Mr. Trotter's convenience also.

Mr. *Plumer*.—Whether upon recollecting yourself upon this subject, you mean to state that the noble defendant admitted that he knew or permitted any emolument to be derived to Mr. Trotter, from the public money, save and except what resulted from its deposit at a private banker's, for official convenience?

Mr. *Whitbread*.—The noble defendant stated, that he had allowed the money to be placed at a private banker's for official convenience; and, when there, he had allowed or permitted, or not prevented Mr. Trotter from making a private emolument of it; and that emolument arising from the interest, he was to make of it from Mr. Coutts's.

Mr. *Plumer*.—Whether the noble defendant admitted his consent or knowledge of any other benefit to Mr. Trotter from it?

Mr. *Whitbread*.—The noble lord never said he had restricted Mr. Trotter from making advantage in any way, to the best of my recollection and belief; and he then stated, that he had made it in that way.

Mr. *Plumer*.—My question is—not whether he restricted him, but whether he said he knew of his having any other advantage, excepting the advantage before stated?

Mr. *Whitbread*.—He did not say he even knew it, but only supposed it: he did not admit that he knew of any other.

Mr. *Plumer*.—Whether he did not also state, in the same speech, that he never knew that Mr. Trotter had invested any money in exchequer or navy bills?

Mr. *Whitbread*.—I believe he said so.

Mr. *Plumer*.—That he never knew he had lent any money, upon security of stock?

Mr. *Whitbread*.—I believe he said so.

Mr. *Plumer*.—That he never knew he had employed any money in the discount of private bills?

Mr. *Whitbread*.—I believe he said so.

Mr. *Plumer*.—That he never knew he had employed any money in the purchase of Bank, or India stock?



Mr. *Whitbread*.---I believe he said so.

Mr. *Plumer*.---Whether you recollect, at the same time, the noble defendant declaring, that he had not the smallest knowledge or belief that Mr. Trotter ever did lay out, for his use or benefit, in any such modes, any sum of public money whatever?

Mr. *Whitbread*.---Please to read the passage over again, and tell me to whom that *his* refers, whether to Mr. Trotter or to lord Melville?

Mr. *Plumer*.---Do you recollect lord Melville's declaring, that he had not the smallest knowledge or belief that Mr. Trotter ever laid out, for his use or benefit, any sum of public money whatever?

Mr. *Whitbread*.---I do not think so precisely, as it is put in those words.

Mr. *Plumer*.---What was the averment upon that subject?

Mr. *Whitbread*.---Pretty nearly amounting to precision, but not altogether; the impression made upon my mind was, that the denial was not positive and precise.

Mr. *Plumer*.---Can you, with any distinctness, recollect the substance of the expressions used?

Mr. *Whitbread*.---I cannot recollect further than I have stated, I cannot discriminate more nicely; I wish I could, for the benefit of the learned counsel, as it would save him trouble.

Mr. *Plumer*.---Is there any part of this expression which you think was not used: I will read it again.

Mr. *Whitbread*.---It is not the expression, it is the general impression of the same words in another order; the insertion or the omission of one word will make all the difference to the construction of the passage.

Mr. *Plumer*.---Have you the notes with you, which you took at the time?

Mr. *Whitbread*.---I have not; they were notes I then took, being then in the house of Commons, and endeavouring to prepare myself to answer the speech of the noble lord; they were notes of that sort, that if I were to refer to them now, I do not know that I should be able to understand them, and whether they are in existence or not I cannot say.

Mr. *Plumer*.---In this passage, which is favorable to lord Melville, you have no distinct recollection of the terms made use of?

Mr. *Whitbread*.---The only precise words I have any distinct recollection of, I have sworn to;---I have no recollection of those words stated by the learned counsel to the court, whether favourable or unfavourable.

A *Lord*.---When lord Melville stated that he would not reveal the application of a sum of 10,000*l.* or thereabouts, did he state to the house his reason for declining so to reveal it?

Mr. *Whitbread*.---In mentioning the first 10,000*l.* or whether he coupled the two together I am not quite sure, but the words he used, and the motives he said that prevented him from revealing the application of that

money, were motives of public duty, of private honour, and personal convenience. I understood him to apply those words to both sums.

Mr. *Whitbread*.---Having given the evidence we shall at present offer upon the subject of those articles, I take the liberty of calling your lordships attention to the subsequent part of the case, to which we are about to adduce evidence; and stating the mode in which we shall adduce that evidence.

First I will apply myself to the second article, that the defendant, in breach of the act, connived at Mr. Trotter's drawing large sums from the Bank, and permitted him to place the same in the hands of Messieurs Coutts, in his own name and under his own control. We shall put in first the appointment of Mr. Trotter as Paymaster to lord Melville, which we wish to have read.

Then several papers were shown to the counsel for lord Melville, and admitted by them to be signed by his lordships. The same were read, and are as follow:

Letter of attorney from lord Melville to Mr. Trotter, dated 10th January, 1786.

"Know all men by these presents, that I the right honourable Henry Dundas, treasurer of his majesty's navy, as well within Great Britain as without, (the kingdom of Ireland excepted) have nominated, constituted, and appointed Alexander Trotter esquire my paymaster, hereby giving and granting to him full power and authority to draw on the governor and company of the bank of England, for and upon my account, as Treasurer of his majesty's navy, all and every sum and sums of money that now are or shall hereafter be wanted for the public services under my care of payment, he being particularly careful to specify in each and every draft the service for which the money is drawn.

In witness whereof I have hereunto set my hand and seal, this 10th day of January 1786, in the 26th year of his present majesty's reign.

HENRY DUNDAS. (L. S.)

Signed, sealed, and delivered, being first duly stamped in the presence of  
WILL. BELL."

"Power of Attorney.

Right hon. Henry Dundas to Alexander Trotter.

Know all men by these presents, that I the right hon. Henry Dundas, treasurer of his majesty's navy, have made, ordained, constituted, and appointed, and by these presents do make, ordain, constitute, and appoint Alexander Trotter of Grafton Street, in the parish of St. Pancras, in the county of Middlesex esquire, my true and lawful attorney for me in my

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name, and on my behalf, to transact, do, perform, and execute all such matters and things as either now do or shall hereafter in any manner whatsoever appertain to the duties of my office or place of treasurer of his majesty's navy, and especially for me in my name and to my use to apply for and receive of and from the officers of the receipt of his majesty's exchequer for the time being, and of and from the governor and company of the Bank of England, all and every such sum and sums of money as shall from time to time be wanting and necessary for the due execution of my said office, and to give and sign receipts for the same. I the said Henry Dundas hereby ratifying and confirming, and agreeing to ratify and confirm all and whatsoever my said attorney shall lawfully do, or cause to be done in and about the premises by virtue of these presents. In witness whereof, I the said Henry Dundas have hereunto set my hand and seal, this nineteenth day of July in the year of our lord one thousand seven hundred and eighty six.

HENRY DUNDAS. (L. S.)

Sealed and delivered, being first  
duly stamped, in presence of

WILLIAM CABELL.

Mr. *Whitbread*.—The next instrument I wish to put in, is a mutual general release, between the right honourable Henry viscount Melville and Alexander Trotter.

Then the release was read, and is as follows :

Mutual general release between the right honourable lord Melville, and Alexander Trotter esquire, of Dreghorn, dated 18th and 23d February 1803.

"To all and sundry to whom these presents shall come, we the right honourable Henry baron Dunira, lord viscount Melville, some time treasurer of his majesty's navy, and Alexander Trotter esquire, of Dreghorn, paymaster of his majesty's navy, send greeting: whereas for several years past, there have been sundry accounts, reckonings, and money transactions depending between us, the accounts of which have lately been examined, adjusted, and agreed upon between us, and upon such examination, settlement, and adjustment, there remained a balance due from the said Alexander Trotter to the aforesaid lord viscount Melville of one thousand four hundred and eighty pounds eleven shillings and one penny sterling money, with which final examination, settlement, and adjustment, both parties declare themselves perfectly satisfied, and do hereby approve of and ratify the same; and they have either mutually delivered up to each other, or resolved and agreed mutually to cancel and destroy all the vouchers or

other memorandums and writings, that at any time heretofore may have existed, passed, or been interchanged between them, relative to the said accounts, and the different items and articles of which the said accounts are composed or consist, and they have further resolved and agreed mutually to release and discharge each other up to the day of the date of these presents, for now and ever: therefore the aforesaid right honourable Henry lord viscount Melville, for and in consideration of what is above mentioned, and also for and in consideration of the sum of five shillings of lawful money of Great Britain, to him in hand well and truly paid by the aforesaid Alexander Trotter, the receipt thereof he doth hereby acknowledge, hath, under the reservation and saving herein-after mentioned, remised, released, and for ever discharged; and doth by these presents for himself, his heirs, executors, administrators, and successors whatsoever, remise, release, and for ever discharge the aforesaid Alexander Trotter, his heirs, executors, administrators, and successors whatsoever, of and from all and all manner of action and actions, cause and causes of action and actions, suits, debt, dues, sum and sums of money, accounts, reckonings, bonds, bills, notes, specialties, covenants, contracts, controversies, agreements, promises, variances, damages, judgments, extents, executions, clauses and demands whatsoever in law and equity, which against the said Alexander Trotter he the said lord viscount Melville ever had, now has, or which he, his heirs, executors, administrators or successors hereafter can, shall, or may have for, upon, or by reason of any matter, cause, or thing whatsoever, from the beginning of the world to the day of the date of these presents. Saving nevertheless, and reserving from the above mentioned release and discharge, and the effect thereof, the aforesaid sum of one thousand four hundred and eighty pounds eleven shillings and one penny, which the aforesaid Alexander Trotter doth hereby acknowledge to be due and owing from him to the said lord viscount Melville, as the balance on the aforesaid accounts so settled and adjusted between the said lord viscount Melville and him the said Alexander Trotter, as is above mentioned. And he, the aforesaid Alexander Trotter, for and in consideration of what is above mentioned, and also for and in consideration of the sum of five shillings of lawful money of Great Britain to him in hand well and truly paid by the aforesaid Henry lord viscount Melville, the receipt whereof he doth hereby acknowledge, hath remised, released, and for ever discharged, and by these presents doth for himself, his heirs, executors, ad-



ministrators, and successors, remise, release, and for ever discharge the aforesaid lord viscount Melville, his heirs, executors, administrators, and successors whatsoever, of and from all and all manner of action and actions, cause and causes of action and actions, suits, debts, dues, sum and sums of money, accounts, reckonings, bonds, bills, notes, specialties, covenants, contracts, controversies, agreements, promises, variances, damages, judgments, extents, executions, claims and demands whatsoever in law and equity, which against the said lord viscount Melville he the said Alexander Trotter ever had, now has, or which he, his heirs, executors, administrators, or successors hereafter, can, shall, or may have, for, upon, or by reason of any matter, cause, or thing whatsoever, from the beginning of the world to the day of the date of these presents. And the said Alexander Trotter doth hereby testify, acknowledge, and declare, and that notwithstanding any thing herein-before contained, he doth still remain indebted and owing to the aforesaid Henry lord viscount Melville in the sum of one thousand four hundred and eighty pounds eleven shillings and one penny lawful money of Great Britain, being the balance of the accounts finally settled and adjusted between him and the said lord viscount Melville as herein-before is mentioned; and both the parties aforesaid consent to the registration hereof in the books of council, and session in Scotland, therein to remain for preservation, or, if necessary, that all due and ordinary execution may be directed hereon, and for that effect they constitute their procurators."

"In witness whereof these presents, written on this and the two preceding pages of paper, duly stamped by Thomas Doige clerk to messieurs Spottiswoodes and Robertson of Sackville street, in the liberty of Westminster, are subscribed by the said parties, and to this last page they have hereunto respectively set and affixed their seals, as follow; viz. by the right honourable Henry lord viscount Melville, at Melville castle, in the county of Mid-Lothian, on the eighteenth day of February, in the year of our Lord one thousand eight hundred and three, before these witnesses, Thomas Pocknell and Thomas Matthews, both his servants, and by the aforesaid Alexander Trotter at London, on the twenty-third day of February, in the year of our Lord one thousand eight hundred and three, before these witnesses, Thomas Wilson of the Navy-pay-office, London, esquire, and John Spottiswoode junior, of Sackville street aforesaid, the place, date, witnesses names, and designation to the execution hereof, by the said Alexander Trotter, being in-

serted by the said John Spottiswoode junior.

Signed, sealed and delivered by the said Henry lord viscount Melville, (being first duly stamped) in the Presence of us witnesses hereto.

MELVILLE. (L. S.)

THOMAS POCKNELL,  
THOMAS MATTHEWS.

Signed, sealed and delivered by the said Alexander Trotter (being first duly stamped) in the presence of us witnesses hereto,

ALEX. TROTTER, (L. S.)

THOMAS WILSON,  
JOHN SPOTTISWOODE, JUN."

Mr. Plumer.—It appears upon the attestation, that lord Melville executed this release at Melville Castle, on the 18th of February, and Mr. Trotter executed it in London on the 23rd.

Mr. Whitbread.—I now wish to call the attention of your lordships to notices which have been served upon the noble defendant, for the production of all papers relative to his connexion with Mr. Trotter, either as his private agent, or as a public officer—we can prove that notice.

Mr. Plumer.—We shall admit it.

Mr. Whitbread.—I now wish to call before your lordships Alexander Trotter, esq.

Then Alexander Trotter, esquire, was called in, and being sworn, was examined as follows:

Mr. Whitbread.—Were you ever in the Navy-pay-office?

Mr. Trotter.—I was.

Mr. Whitbread.—When did you first enter the Navy-pay-office?

Mr. Trotter.—I believe in the latter end of the year, 1776.

Mr. Whitbread.—What was your salary when you were first appointed?

Mr. Trotter.—I went into the pay-office a junior clerk, I believe upon a salary of 50*l.* a year.

Mr. Whitbread.—How long did you continue in the Navy-pay-office?

Mr. Trotter.—I continued I believe till the year 1784, as a clerk.

Mr. Whitbread.—Was your salary increased from your first entering the office, up to the day of your quitting the Navy-pay-office?

Mr. Trotter.—I apprehend it may have been, but not materially; I do not recollect.

Mr. Whitbread.—Was it doubled?

Mr. Trotter.—I do not think it was.

Mr. Whitbread.—How long did you remain out of the Navy-pay-office?

Mr. Trotter.—My recollection does not



serve me to state that precisely; but I believe nearly a twelvemonth.

Mr. *Whitbread*.—What office did you hold when you were replaced in the Navy office?

Mr. *Trotter*.—I was appointed paymaster, under the treasurer of the navy.

Mr. *Whitbread*.—Who appointed you paymaster?

Mr. *Trotter*.—My lord Melville.

Mr. *Whitbread*.—Upon whose recommendation, if you know it?

Mr. *Trotter*.—I am at a loss to ascertain that precisely; but my relation Mr. Coutts, had applied to Mr. Pitt, and I believe Mr. Pitt had made interest with my lord Melville to appoint me to that situation; I do not know whether that was the only interest employed or not.

Mr. *Whitbread*.—When you were appointed paymaster, what was your salary?

Mr. *Trotter*.—Five hundred pounds a year, with some deduction of taxes.

Mr. *Whitbread*.—As paymaster of the navy did you receive the balance of public money which was due from your predecessor?

Mr. *Trotter*.—The Bank books were delivered to me, I believe, by lord Melville, and I was told that the public balance was at that time in the Bank, excepting the sums that were in the hands of the sub-accountants, and a sum which his lordship mentioned to me.

Mr. *Whitbread*.—Do you recollect what that sum was which lord Melville mentioned to you?

Mr. *Trotter*.—I had stated it upon the best of my recollection upon a former occasion, to be 10,000*l.*, but have been induced from many things I have seen since, to believe it was 10,600*l.*—1,600*l.*, a balance due from his first treasurership, and 9,000*l.* a balance due on the first part of the second treasurership.

Mr. *Whitbread*.—Did you examine the public cash at the time you became paymaster?

Mr. *Trotter*.—No further than by observing by the books that the balance was in the Bank.

Mr. *Whitbread*.—Where was that 10,000*l.* which you have thus divided into two sums?

Mr. *Trotter*.—My lord Melville told me that he should account for it.

Mr. *Whitbread*.—Did he tell you in whose possession it was?

Mr. *Trotter*.—He did not.

Mr. *Whitbread*.—Did you receive the balance of Exchequer fees?

Mr. *Trotter*.—I did.

Mr. *Whitbread*.—What is the distinction between Exchequer fee money and the public money deposited at the Bank?

Mr. *Trotter*.—Exchequer fee money is imprested into the hands of the treasurer of the navy, who allows the paymaster to have entirely the management of it, for the purpose of paying fees at the Exchequer, and some other contingencies.

Mr. *Whitbread*.—Is the Exchequer fee money imprested to the treasurer of the navy

in the same manner as the other public money?

Mr. *Trotter*.—It is the only instance in which it differs.

Mr. *Whitbread*.—In what manner does it differ?

Mr. *Trotter*.—The treasurer, or rather the paymaster, having the sole management of that business, applies to the Treasury for 3,000*l.* at a time, as he finds his funds are nearly exhausted or reduced under the sum of 3,000*l.*

Mr. *Whitbread*.—Does that application to the Treasury originate with the treasurer himself?

Mr. *Trotter*.—It is put in execution by the paymaster; it may, perhaps, originate with the treasurer, because the paymaster signs all documents for the treasurer of the navy.

Mr. *Whitbread*.—Does the paymaster transact every part of the duty of the treasurer, by virtue of the power of attorney made to him?

Mr. *Trotter*.—All the public duties of the office, as far as I recollect, except that of appointing the clerks.

Mr. *Whitbread*.—Does the treasurer of the navy do any public duties of the office, or interfere in drafts for cash, after the appointment of his paymaster?

Mr. *Trotter*.—I do not recollect any instance of his having drawn drafts during the time I acted as his paymaster.

Mr. *Whitbread*.—Where was the public money, exclusive of the Exchequer fee money, when you took upon you that appointment?

Mr. *Trotter*.—It was in the hands of Mr. Archibald Douglas, Mr. Douglas's son.

Mr. *Whitbread*.—I mean, exclusive of the Exchequer fee money, where was the public money?

Mr. *Trotter*.—Part of it was in the Bank of England, and part in the sub-accountants of the treasurer of the navy's hands.

Mr. *Whitbread*.—Do you mean exclusive always of the 10,600*l.* for which lord Melville had told you he should account?

Mr. *Trotter*.—I mean so; having mentioned that sum, I did not think it necessary to repeat it.

Mr. *Whitbread*.—Did the public money continue in the Bank of England? I mean to put the question, exclusive of Exchequer fee money: Did all the public money continue in the Bank of England all the time you were paymaster, excepting the money that was in the hands of sub-accountants?

Mr. *Trotter*.—Of the money which I had taken under my management, there were many exceptions.

Mr. *Whitbread*.—What do you mean by the money which you had taken under your management? and where was that money?

Mr. *Trotter*.—I mean in consequence of my having made an application to lord Melville for liberty to draw part of those balances from



the Bank, and to place them in the hand of a private banker, for the convenience of official transactions.

Mr. Whitbread.—Who was that private banker?

Mr. Trotter.—Coutts and Company, in the Strand.

Mr. Whitbread.—Did you draw all your drafts from the Bank in the forms prescribed by the act of parliament?

Mr. Trotter.—To the best of my knowledge and remembrance, I did.

Mr. Whitbread.—Whether you meant to pay them immediately to the sub-accountants, or to place them in the house of Messieurs Coutts, was the same form always used in both those cases? Did you always draw according to the terms of the act?

Mr. Trotter.—I always drew, to the best of my remembrance and belief, in the same form.

Mr. Whitbread.—Did you ever draw a draft upon the Bank of England, specifying Pay-branch, and deposit the money arising from that draft in the house of Coutts?

Mr. Trotter.—Certainly.

Mr. Whitbread.—And the same in the Navy-branch?

Mr. Trotter.—Undoubtedly.

Mr. Whitbread.—And the same in the Victualling-branch?

Mr. Trotter.—I did.

Mr. Whitbread.—Had you at any time any of the money so drawn under the terms of the act, which you took under your own management, in the hands of other persons, besides those of Messieurs Coutts?

Mr. Trotter.—I had.

Mr. Whitbread.—Had you ever with Mr. Sprot?

Mr. Trotter.—I had.

Mr. Whitbread.—With Mr. Montague Lind?

Mr. Trotter.—Mr. Lind, as a friend, used to assist me in negotiating business; but I do not recollect the having lent him any money.

Mr. Whitbread.—Had you ever any in the hands of any house of credit and repute, at Edinburgh?

Mr. Trotter.—I had.

Mr. Whitbread.—Had you ever government security, such as navy, victualling, and transport bills, purchased with such money?

Mr. Trotter.—I had.

Mr. Whitbread.—And Exchequer bills?

Mr. Trotter.—Yes, I had.

Mr. Whitbread.—Did you ever discount the bills of any private individuals with that money?

Mr. Trotter.—I do not recollect the having transacted such business myself; but my friend, Mr. Lind, and others whom I have employed, undoubtedly have.

Mr. Whitbread.—Did you employ persons to discount the bills of private individuals of good repute, with that money, through the medium of friends or agents?

Mr. Trotter.—I have.

Mr. Whitbread.—Were you ever absent from the Navy-pay-office, with permission of your principal?

Mr. Trotter.—I have been.

Mr. Whitbread.—To whom, during those absences, did you confide the management of public money, both at Mr. Coutts's, in the hands you have stated, and at the Bank?

Mr. Trotter.—To Mr. Thomas Wilson.

Mr. Whitbread.—In what way did Mr. Thomas Wilson draw, or in what way was he authorized to draw on your account?

Mr. Trotter.—As I did not wish to propose to my lord Melville to authorize any other person than myself to draw from the Bank, I found it necessary, in case of illness, or occasional absence from the office, when sudden demands were made upon the accountants for payment of money to leave in Mr. Wilson's hands drafts signed by myself.

Mr. Whitbread.—Were those drafts left in blank with regard to the sum?

Mr. Trotter.—That was necessary.

Mr. Whitbread.—Were those blank checks so given to Mr. Wilson both upon the house of Coutts, and also upon the Bank?

Mr. Trotter.—No, only upon the Bank.

Mr. Whitbread.—Was the power of drawing unlimited?

Mr. Trotter.—It was; I did not mean to deny that Mr. Wilson had also liberty to draw upon Mr. Coutts, but it was not under the same form.

Mr. Whitbread.—Had Mr. Wilson also power to draw on Messieurs Coutts?

Mr. Trotter.—He had.

Mr. Whitbread.—In what form?

Mr. Trotter.—I do not recollect that I gave him any written authority, though I suppose I must; as Coutts's house is so correct, I must have given them a written authority to answer demands he might make upon my account.

Mr. Whitbread.—Had Messieurs Coutts unlimited authority to answer the drafts of Mr. Wilson on your account?

Mr. Trotter.—They had.

Mr. Whitbread.—Had Mr. Wilson instructions from you, during your absence, to employ public money for your advantage, in the same way in which you employed it while you were present?

Mr. Trotter.—He had my verbal instructions.

Mr. Whitbread.—Did he act upon those instructions?

Mr. Trotter.—He did.

Mr. Whitbread.—Did you actually make profit of the public money so placed in various hands, in the manner you have now stated?

Mr. Trotter.—I did; I never meant to conceal it.

Mr. Whitbread.—Through whose hands, or whom did you first employ to make profit of the public money for you?

Mr. Trotter.—That I do not distinctly recollect.



Mr. Whitbread.—Was Mr. Jellicoe a person so employed by you?

Mr. Trotter.—He was.

Mr. Whitbread.—Did you ever act as a private agent to lord Melville?

Mr. Trotter.—I have always endeavoured to be of what service I could to his lordship in the transaction of his private business, but without any formal appointment, as an agent.

Mr. Whitbread.—When did the first transaction of agency by you, on the part of lord Melville (though not by any appointment from his lordship), take place?

Mr. Trotter.—It is impossible for me to recollect, as I do not recollect the instance.

Mr. Whitbread.—Did it take place before your appointment of paymaster of the navy?

Mr. Trotter.—It did not.

Mr. Whitbread.—When you were first in the Navy-pay-office, in the character of a clerk, at a salary of 50*l.* a year, were you in any way known to lord Melville in that office?

Mr. Trotter.—I had the honour of being introduced to his lordship.

Mr. Whitbread.—Do you recollect in what year, and about what time, you were so introduced to lord Melville?

Mr. Trotter.—I think about the year 1782.

Mr. Whitbread.—What was your salary in the office at that time?

Mr. Trotter.—I have already stated it to be not more than 100*l.* I do not know whether it had varied from the first salary I had when I went into the office.

Mr. Whitbread.—Did you, after you became paymaster, receive the salary of lord Melville, as treasurer of the navy?

Mr. Trotter.—I did, by virtue of a general power of attorney.

Mr. Whitbread.—Did you receive lord Melville's salary, as his private agent, when lord Melville held other appointments under government?

Mr. Trotter.—I received no other regular salary of lord Melville's into my hands.

Mr. Whitbread.—Did you receive his salary as president of the board of control, for instance?

Mr. Trotter.—I did not.

Mr. Whitbread.—As keeper of the privy seal of Scotland?

Mr. Trotter.—I did not.

Mr. Whitbread.—As keeper of the signet?

Mr. Trotter.—I did not.

Mr. Whitbread.—Did you receive the income of lord Melville's private estates in Scotland?

Mr. Trotter.—I did not receive them regularly; remittances have been made to me from Scotland, but I did not know from what sources they came.

Mr. Whitbread.—Were you agent, to receive regularly the income from lord Melville's estates in Scotland?

Mr. Trotter.—I was not.

Mr. Whitbread.—Did you regularly receive the income of any estates, which lord Melville might have in England?

Mr. Trotter.—I do not recollect that I did.

Mr. Whitbread.—Did you receive the dividends from any public stock belonging to lord Melville?

Mr. Trotter.—I did receive such dividends.

Mr. Whitbread.—Did you keep any account between yourself and lord Melville, as debtor and creditor?

Mr. Trotter.—I did.

Mr. Whitbread.—Can you now produce such account?

Mr. Trotter.—I cannot; I have no account in my possession that I can command, excepting one, that is in the possession of the managers of the impeachment.

Mr. Whitbread.—In what way, in what form, upon what paper, or in what book was that account kept?

Mr. Trotter.—I kept the account in a small account-book of my own.

Mr. Whitbread.—Was a copy or a statement of that account regularly furnished by you to lord Melville?

Mr. Trotter.—It was frequently, but not regularly.

Mr. Whitbread.—When so furnished, did lord Melville sign that account, and you also? and were duplicates of that account made?

Mr. Trotter.—There were duplicates made; he did sign them generally, I believe always when I presented them.

Mr. Whitbread.—Were those duplicates so signed by you and your principal, one part of them left in the hands of lord Melville?

Mr. Trotter.—They were.

Mr. Whitbread.—Did you carry to the credit of that account all sums of money which you received on account of lord Melville for salary and all occasional remittances from Scotland?

Mr. Trotter.—I carried them to the credit of lord Melville in his accounts with me.

Mr. Whitbread.—Was interest, on either side, charged on that account?

Mr. Trotter.—There was none.

Mr. Whitbread.—Did you advance to the debit of that account any sum of money to lord Melville?

Mr. Trotter.—I have advanced sums of money to lord Melville, and placed them to the debit of that account.

Mr. Whitbread.—Did you in 1786, or thereabouts, advance any specific sums to lord Melville that went to the debit of that account?

Mr. Trotter.—As nearly as I recollect I did advance specific sums to lord Melville, and placed them to the debit of that account.

Mr. Whitbread.—Was any security given for those sums?

Mr. Trotter.—His lordship granted me a bond and security for 4,000*l.* which I advanced him in or about that year.



Mr. *Whitbread*.—From what fund was that money or those sums composing the 4,000*l.* advanced?

Mr. *Trotter*.—I was enabled to advance that sum of money to his lordship, from the fund which I have already explained; having had the control of that which was put into my hands, for the purpose of paying Exchequer fees, and as I had money upon two different treasurerships, which would not probably be called for, but had always been allowed to remain in the paymaster's hands, for the trouble of making up the ex-treasurer's accounts, I knew that money would not be called for till I should leave the office, or the accounts should be audited, and from that account I advanced his lordship 4,000*l.*

Mr. *Whitbread*.—Did that sum of 4000*l.* so advanced by you, bear interest?

Mr. *Trotter*.—I charged no interest to his lordship for that sum.

Mr. *Whitbread*.—Did the bond bear upon the face of it, that it was with interest, or without?

Mr. *Trotter*.—It did not bear upon the face of it, that no interest was to be paid; but no interest was expressed to be paid.

Mr. *Whitbread*.—Was interest expressed to be paid upon the face of the bond?

Mr. *Trotter*.—It was not.

Mr. *Whitbread*.—Why did you advance a sum of money to lord Melville without interest?

Mr. *Trotter*.—I did not feel myself entitled to charge his lordship interest for money which had been put into my hand, under the situations which I have described.

Mr. *Whitbread*.—Did you describe to lord Melville the reason why you did not charge interest?

Mr. *Trotter*.—I did not; nor did I press it upon his lordship's attention so much as to know, whether he ever knew that it did bear interest or not.

Mr. *Whitbread*.—Was this 4000*l.* so stated to have been without interest and upon bond, entered in the account which you have stated?

Mr. *Trotter*.—I believe it to have been the first article in that account; but I am only speaking from recollection; and it being at a very distant period, I beg to say, it is only from recollection that I do state it.

Mr. *Whitbread*.—To the best of your recollection and belief, was that the first item in the account?

Mr. *Trotter*.—I believe it was.

Mr. *Whitbread*.—What was the title of the account?

Mr. *Trotter*.—It was entitled an account current.

Mr. *Whitbread*.—In the account current, so kept between you and lord Melville, were other advances made on the account of lord Melville?

Mr. *Trotter*.—As I was in the habit of receiving all his dividends, and his salary, as treasurer of the navy, of course I debited his

lordship with payments that I made for those sums.

Mr. *Whitbread*.—Did you also credit lord Melville for all the dividends received upon those sums?

Mr. *Trotter*.—I did.

Mr. *Whitbread*.—Did you direct a purchase to be made on account of lord Melville of 2,000*l.* India stock, in or about the year 1792?

Mr. *Trotter*.—My attention has been called to that circumstance from seeing the entry in the tenth report, and I have no reason to doubt that I did.

Mr. *Whitbread*.—To the best of your knowledge did you, or did you not give such direction?

Mr. *Trotter*.—I really have no doubt that I did give such directions; although I have no actual remembrance of it, I can venture to say that I did give such directions.

Mr. *Whitbread*.—Do you know, or have you any knowledge from what fund the money was taken with which that 2,000*l.* India stock was purchased?

Mr. *Trotter*.—I have already said that I had drawn money from the bank, and put it into the hands of Coutts and company; these sums having created credit to me at Coutts's house, I then drew upon Coutts for money to pay for that stock.

Mr. *Whitbread*.—Was that 2,000*l.* stock bought on the account of, and for the benefit of lord Melville?

Mr. *Trotter*.—I believe it was.

Mr. *Whitbread*.—Were the dividends of that stock carried to the credit of his account current with you?

Mr. *Trotter*.—I have no doubt that they were; I am obliged to speak under that reserve, from having no documents of my own to refer to; but, from looking at the account at Coutts's house, I am satisfied that the dividends of that stock were carried to the credit of lord Melville's account.

Mr. *Whitbread*.—Did you direct to be purchased a certain quantity of stock, commonly called the loyalty loan, in or about the year 1797?

Mr. *Trotter*.—I did not, to the best of my recollection.

Mr. *Whitbread*.—Was a certain quantity of the loyalty loan subscribed to for the benefit of, or on account of lord Melville, by you or under your authority, or paid for with money coming from out of the funds you have described before?

Mr. *Trotter*.—There was no such stock subscribed for by me or purchased by me; I believe the payments were made by Mr. Coutts's house, as far as I can understand and recollect, and they were afterwards repaid by me to Coutts's house.

Mr. *Whitbread*.—Was that loyalty loan, the price of which was so originally paid by Coutts and repaid by you to Coutts, for the benefit or on account of lord Melville?

Mr. *Trotter*.—It was repaid by me to Mr. Coutts for lord Melville.



Mr. *Whitbread*.—Were the dividends upon that loyalty loan carried to the credit of lord Melville, in the account current between his lordship and you?

Mr. *Trotter*.—They were.

Mr. *Whitbread*.—What was the quantity of that stock so purchased for lord Melville?

Mr. *Trotter*.—I understood, from the first question upon this subject, that it was 10,000*l.* then alluded to; it must therefore be 10,000*l.*

Mr. *Whitbread*.—Was lord Melville debited in the account current between his lordship and you for that sum of 10,000*l.*?

Mr. *Trotter*.—I believe he was.

Mr. *Whitbread*.—From what sources did you derive that sum of 10,000*l.* to repay Messieurs Coutts for the purchase of that loyalty loan?

Mr. *Trotter*.—I cannot state the sources distinctly and separately as they were upon different payments, unless I had documents before me which I have not.

Mr. *Whitbread*.—Were those payments, in fact, paid from the public money which you had in the hands of Mr. Coutts?

Mr. *Plumer*.—I feel a great reluctance upon a question of this nature to offer any interruption; it is painful to me to interpose upon any question, but particularly upon an inquiry like the present, for obvious reasons; and, therefore, I have rather submitted to many questions that in strictness are not regular, than interpose an objection; but I do wish that the gentleman now under examination, when he speaks of transactions, will speak from what he knows of his own knowledge.

Mr. *Whitbread*.—I beg the witness may be directed to withdraw, while the counsel state any objection to the question.

Lord Chancellor.—The witness must withdraw.

[The witness withdrew.]

Mr. *Whitbread*.—If Mr. Plumer has any objection to the last question I put, I will waive that question, and endeavour to put one in a more regular form.

Mr. *Plumer*.—If the question is waived, I have nothing to trouble the Court with upon it; but it may save time, if I merely state that the nature of some part of the examination of this witness is, to interrogate the witness to transactions, of which he states himself to possess no memory, except what he has collected from the tenth report, or from the accounts of other persons.—Your lordships observe that he was interrogated particularly with respect to 2,000*l.* stock, of which he stated he had no recollection but from what he collected in the tenth report and Coutts's accounts, and from thence he derived his recollection and inference of such a transaction having taken place. It is of great importance to us that he should speak to those transactions only of which he has a recollection, in order that we may be enabled from that recollection, to possess your lordships not of a

part of the transactions only, but of the whole.

Mr. *Whitbread*.—I am sure the learned counsel does not mean to interrupt this examination for the sake of interruption; and I beg to correct the statement he has just now made: that Mr. Trotter spoke as to one transaction from the tenth report only. True it is he mentioned his recollection being refreshed by the tenth report, but he concluded by saying that he had no doubt of the fact he asserted.

Mr. *Plumer*.—I did not state that Mr. Trotter derived his knowledge from the tenth report only, but that the witness stated he derived that knowledge, which enabled him to pronounce that opinion upon the subject, partly from the tenth report, and partly from Coutts's account; neither of which are sources from which the witness could legally and properly speak.

Mr. *Whitbread*.—I conceive the witness spoke from his own memory, having refreshed it as he thought proper.

Then Alexander Trotter, esq., was again called in, and examined as follows:

Mr. *Whitbread*.—From what fund or funds did you derive those various payments which constituted the 10,000*l.* repaid to Messieurs Coutts for the purchase of that loyalty loan?

Mr. *Trotter*.—Some of the payments I drew from the Bank, and put into Messieurs Coutts's hand, others I drew from my private account at Mr. Coutts's and paid them into the account of lord Melville.

Mr. *Whitbread*.—Did that private account from which you gave some of these drafts, consist of public money, and a part of it of private money?

Mr. *Trotter*.—It consisted of both.

Mr. *Whitbread*.—Did you purchase, or direct to be purchased, a certain sum of 7,000*l.* 3 per cent. reduced annuities, for or on account of lord Melville?

Mr. *Trotter*.—I directed stock to that amount to be purchased, I believe.

Mr. *Whitbread*.—Were the dividends of that stock carried to the credit of lord Melville in the account current between lord Melville and you?

Mr. *Trotter*.—They were.

Mr. *Whitbread*.—Was any interest charged by you upon any of the sums heretofore specified, 2,000*l.* India stock, 10,000*l.* loyalty loan, and 7,000*l.* 3 per cent reduced?

Mr. *Trotter*.—I have already mentioned, that I placed these sums into my account current with lord Melville, and that I never charged lord Melville interest upon that account, nor did I charge myself interest, when the balance of that account happened to be in his lordship's favour.

Mr. *Whitbread*.—Did you direct payments to be made to private individuals, on account of lord Melville?

Mr. *Trotter*.—I have, frequently.

Mr. *Whitbread*.—Did you direct a certain



sum of money to be paid on account of lord Melville, to the account of sir William Forbes and company in Edinburgh?

Mr. Trotter.—I believe I did, from the documents that I have seen.

Mr. Whitbread.—Have you any doubt of that fact?

Mr. Trotter.—I have none; but at the same time I have no recollection of it.

[The witness was directed to withdraw.]

Mr. Plumer.—This is one of the transactions which affords an instance of the nature of the objection I before stated; and I submit that no part of the account this witness has given, relative to a remittance to the house of Forbes and Company, at Edinburgh, ought to be received, because the witness has uniformly declared he had no recollection upon the subject. He has stated also, that he had in another place directly negatived it; but he states that he had been shown other papers and documents of other persons, from whence it is that he now derives the inference of such a transaction having taken place; and, giving credence to those other papers and other representations, from thence he states that he has no doubt of the truth of the transaction.

But it is of consequence to us to have those other persons before your lordships, in order that those who can speak to it may be interrogated by the house, respecting all the particulars attending it. Therefore I object to Mr. Trotter's account of it, which is only second-hand information, derived from other quarters, having himself no recollection upon the subject, yet saying he has no doubt upon it. A person may have full credit in the books and papers of another, and from thence be able to state he has no doubt about any supposed fact of which he knows nothing.

Mr. Adam.—I take it to be perfectly clear, that wherever a witness speaks from his own recollection positively and distinctly, or where he speaks from any memorandum that he has taken at the time, to which he can refer as having been taken at the time, that the witness may be heard to that recollection to speak to the fact: but I take it to be equally clear that the witness cannot refresh his memory or create his memory by having reference to the books, writings, or conversations of another person; and that what Mr. Trotter now says he has no doubt about, arises from this; and as it is contrary to the law of evidence to admit such testimony, I trust your lordships will think it necessary to confine the honorable manager to such questions, and the witness to those answers which will fall within that rule.

Mr. Whitbread.—My lords, the Commons being always extremely desirous to save the time of this Court, are extremely happy that they have a memorandum of Mr. Trotter's, written at the time, to put into his hand.

Then Alexander Trotter, esq., was again called in, and examined as follows:

Mr. Whitbread.—Is that letter now in your hand, of your hand-writing?

Mr. Trotter.—This letter is of my hand-writing.

Mr. Whitbread.—Is the whole your hand-writing.

Mr. Trotter.—It is.

Mr. Whitbread.—Read that, in order to refresh your memory; read first aloud to the Court the date of it?

Mr. Trotter.—The date is the 18th of July, 1787.

Lord Chancellor.—Read the whole of it to yourself, so as to enable you (as far as it can) to answer the questions that shall be proposed to you.

Mr. Whitbread.—Having now read the letter, does it enable you to speak from your memory, so refreshed, whether you did pay in a sum of money into the house of sir William Forbes and Company, at Edinburgh?

Mr. Trotter.—I am satisfied that I gave such directions, though I do not remember the circumstance.

Mr. Whitbread.—From that memorandum, are you satisfied that you gave such directions?

Mr. Trotter.—Perfectly so.

Mr. Whitbread.—To what amount?

Mr. Trotter.—2,000*l*.

Mr. Whitbread.—Was that sum of 2,000*l*. carried to the debit of lord Melville in the account current, and when?

Mr. Trotter.—It was carried to the debit of lord Melville's account with me; but as his lordship had more than one account, I do not recollect which account it was carried to.

Mr. Whitbread.—Was it carried to the debit of some account between lord Melville and you?

Mr. Trotter.—Certainly.

Mr. Whitbread.—Was any interest charged upon that 2,000*l*. in that account, whatever account it might have been?

Mr. Trotter.—No.

Mr. Whitbread.—Do you recollect, from having looked at that document, in your own hand-writing, and made at the time, any advance directed by you to be made to the account of lord Melville to the house of Mansfield, Ramsay, and Company, in Edinburgh?

Mr. Trotter.—The same letter specifies the sum of 3,374*l*. to have been paid by my directions to Messieurs Mansfield, Ramsay, and Company, on lord Melville's account.

Mr. Whitbread.—Was any security given to you for either of those sums from lord Melville?

Mr. Trotter.—None that I recollect; but having no recollection of the transaction at all, I can recollect no collateral circumstance attending it.

Mr. Whitbread.—Was the last sum you have mentioned carried to the debit of lord



Melville, in any account between his lordship and you?

Mr. Trotter.—Certainly.

Mr. Whitbread.—What was the amount of that sum so paid by you to Mansfield, Ramsay, and Company?

Mr. Trotter.—3,374*l*.

Mr. Whitbread.—Was any interest charged upon that sum, between lord Melville and you?

Mr. Trotter.—I believe none to have been charged.

Mr. Whitbread.—Was the balance of the account current, between you and lord Melville, more generally on one side or the other?

Mr. Trotter.—It was.

Mr. Whitbread.—On which side?

Mr. Trotter.—Lord Melville was generally indebted to me.

Mr. Whitbread.—To what amount, upon an average, in that account current?

Mr. Trotter.—I am perfectly unable to state that circumstance.

Mr. Whitbread.—Can you recollect whereabouts it might be?

Mr. Trotter.—I cannot, unless any particular time was specified, and then I do not believe I could do it.

Mr. Whitbread.—When was that account current brought to a settlement?

Mr. Trotter.—Upon the general settlement which I had with his Lordship, at the time he left the Navy-pay-office.

Mr. Whitbread.—When was that?

Mr. Trotter.—I think upon the 31st of May, 1800.

Mr. Whitbread.—Was a transcript of that account, or the account itself, presented to lord Melville at that time?

Mr. Trotter.—I made out a general statement of his lordship's business as far as I was connected with him, and that account was particularly specified as well as others.

Mr. Whitbread.—At that time, in whose favour was the balance?

Mr. Trotter.—The balance was in my favour.

Mr. Whitbread.—To what amount, or whereabouts was the balance in your favour?

Mr. Trotter.—I presume your lordships mean the general statement, including all his account.

Mr. Whitbread.—The account current only, I was speaking to now; however, I will postpone that question to a future opportunity, to avoid confusion. Do you recollect another advance in the year 1789, about the month of July, to sir William Forbes and Company?

Mr. Trotter.—I have no recollection of it.

Mr. Whitbread.—Have you any recollection of the sum of 3,000*l*. advanced about the 17th of the same month to Mansfield, Ramsay, and Company, on account of lord Melville?

Mr. Trotter.—I have no recollection of that circumstance; I have seen both sums stated in the Tenth Report, but I have no other means of recollecting it.

Mr. Whitbread.—Look at that paper. Is that your hand-writing at the bottom of that paper?

Mr. Trotter.—It is.

Mr. Whitbread.—Read that, and see whether you can refresh your memory by it; it is a memorandum, dated 5th January, 1790; the transaction took place in 1789. Can you now, from having refreshed your memory by the documents in your hand, state whether you did advance on account of lord Melville, to sir William Forbes and Company, 1,000*l*. in the month of July, 1789?

Mr. Trotter.—I have no recollection of that particular transaction; and I hope it will not appear extraordinary to you, when it is considered the multiplicity of the transactions that went through my hand, during the time I acted in that public capacity, and which appears in the Tenth Report.

Mr. Whitbread.—But are you able to speak to the fact by referring to the paper you hold in your hand?

Mr. Trotter.—I have no doubt about the fact, from its being in a signed account between my brother at Edinburgh and myself, and it is stated to be transmitted to the House, at Edinburgh, through my brother.

Mr. Whitbread.—Have you any doubt as to the other sum advanced to Mansfield, Ramsay and Company?

[The witness was directed to withdraw.]

Mr. Plumer.—I wish to call your lordships attention to the distinction between what a man recollects from papers being shown to him relative to an account between himself and another, and the inference he may draw from such papers. I did not object to the paper being put into Mr. Trotter's hands for the purpose of refreshing his memory, although it is not of a contemporaneous date; but I permitted him to look at it, to see whether, by the inspection of that paper, he could take upon himself, upon his oath, to say he had any recollection that such a transaction took place. And after reading that paper, the witness says he has no recollection upon that subject. He is still asked whether he has any doubt of the fact. He says "I have no doubt" deriving his inference of the truth of it from that paper, but being asked, can you say you recollect the fact, he answers, "no, I do not know any thing about it." I submit that is not proper evidence to be received.

Mr. Whitbread.—To save the time of the Court I will waive the question.

Then Alexander Trotter, esq., was again called in, and examined as follows:

Mr. Whitbread.—Whether there was any other account, besides the account current, kept between you and lord Melville?

Mr. Trotter.—There was.

Mr. Whitbread.—Was that account also kept in a book?



Mr. Trotter.—It was written in the same book.

Mr. Whitbread.—What was the title of that account?

Mr. Trotter.—It was entitled "Chest Account."

Mr. Whitbread.—Do you recollect whether the sum of 10,600*l.* which it was stated by lord Melville that he would account for, when you first became paymaster of the navy, was carried into that account?

Mr. Trotter.—I do recollect that it was stated in that account.

Mr. Whitbread.—Did it form the first item of the account?

Mr. Trotter.—It did.

Mr. Whitbread.—Were there other sums advanced on account of lord Melville, entered in this Chest account?

Mr. Trotter.—There were.

Mr. Whitbread.—Was the loyalty loan to the amount of 10,000*l.* which you stated to be advanced to lord Melville for the purchase of that stock, and carried to the account current, ever transferred to this Chest account?

Mr. Trotter.—It was.

Mr. Whitbread.—To whom did you consider lord Melville to be debtor on the Chest account?

Mr. Trotter.—I considered lord Melville to be indebted to government for the sums I advanced upon the Chest account.

Mr. Whitbread.—Did lord Melville know that you so considered it?

Mr. Trotter.—I never had any specific conversation with his lordship upon it, so as to enable me to say positively that he did; but the accounts were signed, and duplicates were delivered to his lordship.

Mr. Whitbread.—What was your reason for transferring the loyalty loan money from the account current to the Chest account?

Mr. Trotter.—It was from an anxiety, an attention to my own interest. Lord Melville was indebted to me as a private individual only upon the account current, and I considered him indebted, as I said before, to government, for the balance upon the Chest account.

Mr. Whitbread.—Did you state to lord Melville, that you wished or intended to transfer this loyalty loan money, from the account current to the Chest account?

Mr. Trotter.—I do not recollect that I positively stated it to his lordship, but I delivered accounts which bore it upon the face of them.

Mr. Whitbread.—Were those accounts, upon the face of which this transfer was borne, delivered to lord Melville, and signed by him the same as the other accounts?

Mr. Trotter.—They were.

Mr. Whitbread.—Were the duplicates so signed, one part taken by lord Melville and the other part by you?

Mr. Trotter.—They were.

Mr. Whitbread.—Did you charge any inter-

est to lord Melville upon the Chest account, when the balance appeared to be against lord Melville?

Mr. Trotter.—I did not.

Mr. Whitbread.—On which side did the balance on the Chest account usually stand?

Mr. Trotter.—Lord Melville generally stood debtor upon that account.

Mr. Whitbread.—Did lord Melville approve of the transfer of the loyalty loan to the Chest account?

Mr. Trotter.—He neither approved nor disapproved of it. He took the accounts without any consideration.

Mr. Whitbread.—Did lord Melville, in fact, know, at the time the Chest account was delivered to him, that he was indebted to the public, upon that account, in the sum of 10,000*l.*?

Mr. Trotter.—I presented the accounts to his lordship; but, as I had no conversation upon them, I am altogether at a loss to answer that question.

Mr. Whitbread.—Did he know of any distinction between the two accounts, respecting the situation of the one account and the other account?

Mr. Trotter.—I have no reason to doubt it.

Mr. Whitbread.—Did lord Melville then know, that upon one account he was indebted immediately to government, and on the other that he was debtor to you?

Mr. Trotter.—I believe he did.

Mr. Whitbread.—When did this Chest account terminate?

Mr. Trotter.—At the general settlement which took place when his lordship left the office.

Mr. Whitbread.—Did you present to lord Melville a general statement of this Chest account, as well as the account current?

Mr. Trotter.—I did.

Mr. Whitbread.—Did lord Melville sign that account, or acknowledge it?

Mr. Trotter.—I believe he did.

Mr. Whitbread.—Did lord Melville, at that time, discharge these two accounts?

Mr. Trotter.—He did, to the best of my recollection.

Mr. Whitbread.—Do you recollect what the amount due to you upon those two accounts was?

Mr. Trotter.—I have no recollection of the precise specific amount.

Mr. Whitbread.—To the best of your recollection, whereabouts was the amount of these two sums?

Mr. Trotter.—I should think nearly about 50,000*l.*

Mr. Whitbread.—Did you lay before lord Melville, at that time, the differences between the office cash and the cash at the Bank?

Mr. Trotter.—I do not recollect that I did.

Mr. Whitbread.—Did you state that in consequence of lord Melville's intended quitting the Navy-pay-office, there would be a necessity for his providing a sum of money.



Mr. Trotter.—I did.

Mr. Whitbread.—For what purpose was it necessary to provide that sum of money?

Mr. Trotter.—To make a repayment of the money which his lordship had from the public balances.

Mr. Whitbread.—Did that re-payment so to be made by his lordship, consist of the two sums so taken together, the account current and the Chest account?

Mr. Trotter.—I have explained, that I applied to his lordship for a general settlement at that time, and finding that his lordship pointed out assets sufficient to discharge both, I incorporated the two accounts together, and his lordship paid me the balance of both.

Mr. Whitbread.—To what account was that balance so paid to you placed?

Mr. Trotter.—To discharge the balance upon the Chest account, and upon my account current with his lordship.

Mr. Whitbread.—Where did you pay those balances as soon as you received them?

Mr. Trotter.—I do not know that; they went all through the same channel.

Mr. Whitbread.—Where did they center ultimately?

Mr. Trotter.—They must have centered ultimately in the Bank, because I had a larger sum at that time from the Bank upon my own account.

Mr. Whitbread.—Did this sum which my lord Melville so paid you, go to make good the differences at the Bank?

Mr. Trotter.—I cannot state from recollection whether the whole went or not.

Mr. Whitbread.—Were your differences, as paymaster at the Bank, made good in part by these payments so received of lord Melville?

Mr. Trotter.—As money cannot be identified, I cannot answer that literally, because it may first have gone into Coutts's house, and I may have drawn a larger sum from Coutts's house, which may have made up my balances.

Mr. Whitbread.—Did the money so paid by lord Melville, go into Coutts's or any other hands, for the purpose of ultimately making good these differences at the Bank, or a part of them?

Mr. Trotter.—I presume they must ultimately have been applied to that purpose, as I had a much larger sum to pay at the Bank than upon my own account.

Mr. Whitbread.—Did you consider that money, before it was paid by lord Melville, as a part of the difference owing to the public?

Mr. Trotter.—I have stated that a part of the balance, that was due upon the Chest account, I looked upon as due to the public, the other as a balance due to myself; and whether I paid that money afterwards into the Bank, in whole, or not, upon my own account, I do not know.

Mr. Whitbread.—Did you consider that your own difference to the public was in-

creased by as much as lord Melville was debtor to you upon the account current?

Mr. Trotter.—I did, as far as I can understand the question.

Mr. Whitbread.—If, for instance, exclusive of the account current, your difference consisted of 20,000*l.* and the account current consisted of 25,000*l.* was the difference increased to 45,000*l.* by the payment of lord Melville to you?

Mr. Trotter.—I do not understand the question.

Mr. Whitbread.—Was your difference, your debt to the public, swelled by the debt owed to you on the account current of lord Melville?

Mr. Trotter.—If I understand the question, certainly not necessarily.

Mr. Whitbread.—Was it in fact so increased on account of the debt lord Melville owed to you?

Mr. Trotter.—I do not know whether it was.

Mr. Whitbread.—If you had not had any balance due to you from lord Melville, on the account current, on the 31st May, 1800, would you have had so great a difference at the Bank as then existed?

Mr. Trotter.—I may have chosen to take the balance which lord Melville owed to me into another channel, in which case it would have made no difference in the cash in the Bank; and, as the fact did not exist, I cannot say what I would have done in such cases.

Mr. Whitbread.—If lord Melville had not paid to you the sum due upon the private account, to enable you to pay that sum into the Bank, must you not have been under the necessity of providing that sum of money elsewhere?

Mr. Trotter.—Certainly.

Mr. Whitbread.—Did lord Melville understand then, that the discharge of these two accounts was to enable you to make good your differences at the Bank?

Mr. Trotter.—Certainly not; lord Melville understood that so much of it was due upon the Chest account; I believe he understood that was to make good his lordship's difference at the Bank, and the other was to be in repayment of a sum of money which he owed me upon my account current.

Mr. Whitbread.—Whether you gave directions in or about the year 1789 or 1790 for the purchase of another sum of East India stock for the benefit of lord Melville?

Mr. Trotter.—I gave directions in the year 1789, to purchase a sum of East India stock for the benefit of lord Melville.

Mr. Whitbread.—Are you enabled, from your memory, to state what passed between lord Melville and yourself upon that subject?

Mr. Trotter.—I will state the transaction as far as my memory will carry me, which was in consequence of a conversation I had with his lordship, in which he stated his opinion of the value of East India stock, from



the probable rise that would take place ultimately in that stock; and I observed to his lordship, that if he was impressed with so good an opinion of that stock, that I thought in consideration of his own interest he ought to invest a sum of money in that stock.—His lordship's observations seemed to throw it aside, by saying, that he had no money to invest in stock. I had mentioned to his lordship, that there were considerable balances lying at all times in my hands that were not called for, and in all probability would not be called for, from circumstances that I need not, perhaps, relate at this time; but it was money lying unclaimed in my hands, which it would not be necessary to advance to the public until it was claimed, and there was no prospect of that claim taking place soon; and I advised his lordship to give me leave to lay out so much of that money as would buy about 13,000*l.* or 14,000*l.* East India stock, but which his lordship refused in the most pointed and decided manner, insomuch that I was afraid I had incurred his lordship's displeasure by proposing it; but it occurred to me at the same moment, that it would be possible to borrow a sum of money upon the security of that stock, and I proposed to his lordship that I should endeavour to do so; and that I should lay out that money in the purchase of East India stock; to which his lordship readily assented. I mentioned that I then lived with a relation of my own, who was a man of considerable importance in the city, and that he would be enabled to raise this sum of money for me; in short, I made it an easy matter to his lordship; but when I applied to Mr. Lind, the gentleman to whom I alluded, I found that I was deceived, and that it was not an easy matter to raise money upon that security. But I was unwilling to disappoint his lordship in what I had so sanguinely told him I could effect, and I never acquainted his lordship with the difficulty that had arisen; but I assisted Mr. Lind by advancing money from the public money which I had the management of. I never had occasion afterwards to mention the circumstance to lord Melville until April in the last year, and he was perfectly unacquainted with my having made use of the public money in that transaction; and I charged his lordship a regular interest, for the whole of the money which I advanced in that transaction, from the first day it was advanced, until the final settlement of our accounts.

Mr. Whitbread.—Did lord Melville never inquire the name of the lender of that money?

Mr. Trotter.—I do not recollect that his lordship ever did: I had stated, in such positive terms, that Mr. Lind could do it, that I never found it necessary to mention the circumstance again to lord Melville, but took it for granted, that he had thought I had concluded the transaction in the manner that I had supposed it could be effected.

Mr. Whitbread.—Did you mention Mr. Lind's name to lord Melville at the time?

Mr. Trotter.—I did.

Mr. Whitbread.—Were the dividends upon that stock carried to the credit of lord Melville's account?

Mr. Trotter.—They were.

Mr. Whitbread.—Did you direct any transfer to be made to lord Melville of any part of that stock, at any time, previous to the year 1800?

Mr. Trotter.—I have no recollection of that circumstance; it was mentioned to me yesterday, but I do not recollect it.

Mr. Whitbread.—What was the amount of the sum originally expended in the purchase of this stock?

Mr. Trotter.—I have stated it in another place, and I have no reason to alter my opinion now, from recollection that it was about 23,000*l.*

Mr. Whitbread.—Did the debt, for the purchase of that stock, continue to that amount, until the stock was replaced or repaid for?

Mr. Trotter.—It did not.

Mr. Whitbread.—In what manner and to what amount was it diminished?

Mr. Trotter.—It was diminished by payments from his lordship to me, to the sum of 20,000*l.*; upon which his lordship continued to pay interest to me, until the final settlement of our accounts.

Mr. Whitbread.—In what manner was the 3,000*l.* repaid to you?

Mr. Trotter.—I have no distinct recollection of it; but I believe I have been paid at two different times.

Mr. Whitbread.—Was the 3,000*l.* so paid, carried to the credit of either lord Melville's Chest account, or his account current with you?

Mr. Trotter.—It was not.

Mr. Whitbread.—To what credit, then, was it carried?

Mr. Trotter.—It was carried to the credit of the debt which was upon the stock.

Mr. Whitbread.—To whom was that 3,000*l.* paid?

Mr. Trotter.—As I had advanced the money for the stock myself, of course it was repaid to myself.

Mr. Whitbread.—Was that East India stock in your possession, or was it still placed for the benefit of lord Melville, in May 1800, when he quitted the Navy-pay-office?

Mr. Trotter.—He was possessed of it in the manner I have described; it was held in trust by the house of Messieurs Thomas Coutts and Company, and subject to my control.

Mr. Whitbread.—Was it subject to your control, during the whole time that it was out?

Mr. Trotter.—I do not recollect any interruption of it.

Mr. Whitbread.—Were the dividends always carried to lord Melville's credit?

Mr. Trotter.—I believe they were.

Mr. Whitbread.—At the time that you pro-



posed to lord Melville to purchase East India stock for him, out of the public balances, lying in your hands unclaimed, did lord Melville ask you the amount of such balances?

Mr. Trotter.—I do not recollect that he did.

Mr. Whitbread.—Did he inquire whether you had in your hands assigned or unassigned balances, or whether you had both or either?

Mr. Trotter.—I never had any conversation with his lordship upon the subject?

Mr. Whitbread.—Were you ever restricted by lord Melville in any way as to the quantity of money you were to keep out of the Bank at the house of Messieurs Coutts?

Mr. Trotter.—Lord Melville left the management of the balances in the Bank entirely to me. I believe I enjoyed his lordship's confidence to the fullest extent, and he never interfered.

Mr. Whitbread.—Was there any restriction upon you, as to the sums to be taken out of the Bank for that purpose?

Mr. Trotter.—There were none.

Mr. Whitbread.—There were no restrictions as to the branches upon which you were to draw, when you took money from the Bank to place it at Messieurs Coutts?

Mr. Trotter.—Lord Melville never interfered with me in the management of the balances of the Pay office.

Mr. Whitbread.—I asked, if there were any restrictions as to the branches upon which you were to draw, when you took money from the Bank to place at Messieurs Coutts?

Mr. Trotter.—I have not the least idea of the meaning of the question.

Mr. Whitbread.—Did lord Melville say that you might or might not draw upon the Pay branch, that you might or might not draw upon the Victualling branch, that you might or might not draw upon the Navy branch, or did he mention any restriction as to either of them?

Mr. Trotter.—I have already said, lord Melville never gave me any instructions, with regard to managing the balances of the office; therefore I do not know what the honourable manager means by restrictions upon it.

Mr. Whitbread.—Did lord Melville order you not to draw upon this or that branch for any purpose?

Mr. Trotter.—Certainly not.

Mr. Whitbread.—Did you ever draw drafts in favour of the right honourable Henry Dundas, in your account at Coutts's?

Mr. Trotter.—Undoubtedly.

Mr. Whitbread.—Did you ever draw drafts in favour of Mr. Dundas?

Mr. Trotter.—Certainly.

Mr. Whitbread.—Did you ever draw drafts in favour of Henry Dundas?

Mr. Trotter.—Undoubtedly.

Mr. Whitbread.—Do all these three descriptions mean the same person, the treasurer of the Navy?

Mr. Trotter.—They did, unless some ex-

ceptions may exist in case of my having drawn in favour of Mr. Robert Dundas.

Mr. Whitbread.—Were those drafts in general in favour of the treasurer of the Navy, with small exceptions?

Mr. Trotter.—They were.

Mr. Whitbread.—Did you use either of those names—"Mr. Dundas, Henry Dundas, or, the right honourable Henry Dundas," in the drafts on Messieurs Coutts, without the payment being made either to lord Melville, or some person on account of lord Melville, or some person having a money connexion with lord Melville?

Mr. Trotter.—It is probable I never did; but so many transactions of this sort took place, that it is impossible for me to say that there were no exceptions.

Mr. Whitbread.—I ask, generally speaking?

Mr. Trotter.—Generally speaking, they have collateral connexion with lord Melville's accounts.

Mr. Whitbread.—Was this East India stock, in May 1800, when lord Melville went out of office, either sold or pledged, for the purpose of making up your differences at the Bank?

Mr. Trotter.—It was disposed of at that time.

Mr. Whitbread.—Was there any increase upon the value of that stock, from the time at which it was bought to the time at which it was either so sold or pledged?

Mr. Trotter.—The stock had risen.

Mr. Whitbread.—To what account was the money, obtained upon the stock, either sold or pledged, carried?

Mr. Trotter.—20,000*l.* to pay off the debt upon that stock, and 8,000*l.* of it went to pay me in part liquidation of the balance upon my account current.

Mr. Whitbread.—Had lord Melville, in fact, the benefit of the rise of that stock?

Mr. Trotter.—Certainly he had, and the loss would also have accrued to his lordship, in case the stock had fallen.

Mr. Whitbread.—Had he the benefit of the excess of dividends, above the interest of five per cent paid for the money, during the whole time there was such an excess?

Mr. Trotter.—I do not know that the dividend did exceed the interest which he paid upon it, especially at first, I believe it did not.

Mr. Whitbread.—Was there at any time a rise upon that, between the time the stock was purchased, and the time it was sold?

Mr. Trotter.—There was a rise upon the dividends on the stock, several years after it was purchased upon his lordship's account.

Mr. Whitbread.—Was any security of any kind given to Mr. Lind, for this purchase of East India stock?

Mr. Trotter.—The stock was invested in his name some time after, not immediately, as I have understood from a document which has been lately put into my hands.

Mr. Whitbread.—Did the accounts, which you from time to time, delivered to lord Mel-



ville, though not delivered at regular periods, include all the receipts and payments made and received by you, on account of lord Melville?

Mr. Trotter.—They did, to the best of my recollection.

Mr. Whitbread.—Did you, at the close of the year 1790, make up all the balances of the Navy-pay-office, at the Bank of England?

Mr. Trotter.—The account at the Bank of England, appears by my books to be balanced at that time; but whether the balance was exactly paid in, or not, I cannot ascertain, because some of my drafts may not have been presented, in which case, that would form part of the balance appearing so to be paid in.

Mr. Whitbread.—Was the balance at the end of the year 1790, exactly struck, and did it appear that there was no deficiency at that time?

Mr. Trotter.—They appeared to be; I could speak with more precision, if the accounts were laid before me, which I have not had the advantage of for some time past.

Mr. Whitbread.—Did you make up the difference between the balance of the one account and the other, at the end of the year 1791?

Mr. Trotter.—I cannot speak from recollection; my documents are in the hands of the honourable managers, and I probably should be able to speak with more precision, if they were laid before me.

Mr. Whitbread.—If there was any difference between the office cash and the Bank cash, in the end of the year 1791, of what money did that difference consist?

Mr. Trotter.—It would consist of drafts of mine which had not been presented at the Bank, in part, and in part of the sum of money which lord Melville was indebted to the Chest account, and to me upon my account current.

Mr. Whitbread.—Did that balance you are now speaking of, comprehend both the Chest account and the account current?

Mr. Trotter.—It did, to the best of my recollection of the accounts.

Mr. Whitbread.—Did the balances so outstanding, from 1791 to 1799, comprehend those balances so due from lord Melville?

Mr. Trotter.—They did, to the best of my recollection, of the settled accounts always, but a small account may have existed upon the account current, which was not included in that.

Mr. Whitbread.—Did the difference between the office and the Bank balance, at the end of each of those years which you have specified, denote, with a trifling exception, the sum of money which was to be made good by payments from lord Melville, to the public and to you?

Mr. Trotter.—They did, to the best of my recollection.

Mr. Whitbread.—How long did you continue in office after lord Melville left it?

Mr. Trotter.—Upwards of two years.

Mr. Whitbread.—Who was treasurer of the navy after lord Melville?

Mr. Trotter.—Lord Harrowby succeeded lord Melville; Mr. Bathurst succeeded lord Harrowby, and Mr. Tierney succeeded Mr. Bathurst.

Mr. Whitbread.—Was any interruption given, by either of those treasurers, to the practice of taking the money from the Bank, and placing it in the hands of Mr. Coutts, or any private individuals?

Mr. Trotter.—Mr. Bathurst ordered it to be altogether done away.

Mr. Whitbread.—Was that order carried strictly into execution?

Mr. Trotter.—I do not know how I must be pinned down to the word strictly; Mr. Bathurst did not press it to be done within a few days, but to do it with convenience to myself; that I might do it in the space of a month or so; there was no time defined.

Mr. Whitbread.—Was it done within the month?

Mr. Trotter.—It was.

Mr. Whitbread.—Did you continue in the situation of paymaster, after the money was so placed at the Bank?

Mr. Trotter.—I did.

Mr. Whitbread.—When did you quit the office?

Mr. Trotter.—I left the office in one month after Mr. Tierney succeeded to the situation of treasurer of the navy; I do not recollect the time.

Mr. Whitbread.—Were you ever after appointed paymaster of the navy?

Mr. Trotter.—I was, by Mr. Canning.

Mr. Whitbread.—Did the same practice, that had been ordered by Mr. Bathurst, prevail during the treasurership of Mr. Canning?

Mr. Trotter.—It did.

Mr. Whitbread.—Was the balance upon the Chest account always against lord Melville?

Mr. Trotter.—I believe it was.

Mr. Whitbread.—Was any security of any sort signed by lord Melville to you, or to any other person, on account of the India stock so purchased?

Mr. Trotter.—None.

Mr. Whitbread.—When did you quit the Navy-pay-office altogether?

Mr. Trotter.—I believe in the April in last year; I have no recollection of the precise day.

Mr. Whitbread.—Did you, while you were paymaster of the navy, make any cash payment with your own hand, on account of the public?

Mr. Trotter.—I do not recollect that I ever did, excepting in Exchequer fees.

Mr. Whitbread.—Did you always issue your money by drafts to your sub-accountants?

Mr. Trotter.—I recollect one or two instances wherein I did not; having a sum of money in the Iron Chest, I issued to them.



Mr. Whitbread.—Were those exceptions to the general rule few?

Mr. Trotter.—Very few.

Mr. Whitbread.—Did you ever draw drafts upon the Bank of England, and go yourself, or send others to take cash or bank-notes from the Bank, to be paid either to Messieurs Coutts, or elsewhere?

Mr. Trotter.—I do not know that I ever did it personally; but I have sent others to do so.

Mr. Whitbread.—Have you, or any other persons, received such money without passing it through the hands of Mr. Coutts?

Mr. Trotter.—I have no knowledge of its ever having been done; I have been informed it has been done.

Mr. Whitbread.—Do you recollect no instance of notes having been brought from the Bank of England, without passing through the hands of Messieurs Coutts.

Mr. Trotter.—I do not recollect any myself; my instructions were generally given to Mr. Wilson, who managed that for me, or Mr. Tweedy of the Pay-office. I am told that has happened more than once, but have no recollection of it.

Mr. Whitbread.—Do you recollect drawing one day for a million of money, and having received a million of money, without passing through the house of Coutts?

Mr. Trotter.—I never drew for a million of money but once in my life, and that money went into the hands of Coutts.

Mr. Whitbread.—Was it paid into Coutts's hands in bank-notes, or was the draft given to them?

Mr. Trotter.—My draft was given to the principal money conductor of the Pay-office, who went into the Bank with that draft; the notes being divided into a great number of small notes, and he brought that directly, and put it into the house of Coutts, as I understand.

Mr. Whitbread.—Then it was put into Coutts's bank in bank-notes, and not in the shape of a draft?

Mr. Trotter.—I drew a draft as usual upon the Bank, but instead of giving the draft to Coutts's, I gave it to the money conductor, who carried it to the Bank, and took the Bank notes to Coutts's.

Mr. Whitbread.—Did you ever draw for small sums, either upon the Bank, or upon the house of Coutts, for public services?

Mr. Trotter.—I do not know what the honourable manager may call a small sum.

Mr. Whitbread.—Did you ever draw for a less sum than a thousand pounds, either upon the Bank or Messieurs Coutts, on account of the public service?

Mr. Trotter.—I make no doubt I have often done so.

Mr. Whitbread.—Did you ever make any small payments on account of the public service, excepting Exchequer fees?

Mr. Trotter.—I do not recollect any, unless it were re-payments into the Bank.

Mr. Whitbread.—According to the nature and to the practice of the Pay-office, since that account, have payments been made by the paymaster in the ordinary course of the office?

Mr. Trotter.—I do not recollect any. I do not know what the honourable manager alludes to.

Mr. Whitbread.—Do any payments to any public creditors pass, in the usual form of business, through the hands of the paymasters?

Mr. Trotter.—I believe not.

Mr. Whitbread.—Are not they all made by the sub-accountant?

Mr. Trotter.—They are, as I said before, except with regard to the Exchequer fees.

Mr. Whitbread.—Did you ever receive any gratuity from lord Melville, for acting as his agent?

Mr. Trotter.—Never.

Mr. Whitbread.—Is the book in which you kept the account current and the Chest account destroyed?

Mr. Trotter.—It is.

Mr. Whitbread.—Are all the books containing any accounts between lord Melville and you, and the vouchers, destroyed?

Mr. Trotter.—They are, to the best of my belief.

Mr. Whitbread.—Did you ever lose one of these books whilst they were in existence?

Mr. Trotter.—I was robbed of one of those books at one time.

Mr. Whitbread.—Did you recover it again?

Mr. Trotter.—I did.

Mr. Whitbread.—How did you get it again?

Mr. Trotter.—I received it from one of the magistrates of the public office, in Hatton-garden.

Mr. Whitbread.—Was that one of the books in which the account current and Chest account, between you and lord Melville, was entered?

Mr. Trotter.—It was.

Mr. Whitbread.—Look at this paper, is that signed by you?

Mr. Trotter.—It is.

Mr. Whitbread.—What does that paper purport to be?

Mr. Trotter.—It purports to be an account current between lord Melville and myself, dated, commencing in the year 1802.

Mr. Whitbread.—Is that an account balanced?

Mr. Trotter.—It appears to be so.

Mr. Whitbread.—Is it signed by both parties?

Mr. Trotter.—It is.

Mr. Whitbread.—Have you any vouchers in your hand connected with that paper?

Mr. Trotter.—Here are vouchers, but I do not know whether they belong to it or not.

Mr. Whitbread.—Refer to them.

Mr. Trotter.—They do not seem to refer to the account, they are of subsequent date, I see no reference whatever.



Mr. *Whitbread*.—Are they vouchers of any accounts between lord Melville and you?

Mr. *Trotter*.—They are vouchers of three payments, which I appear to have made upon lord Melville's account.

Mr. *Whitbread*.—Is the sheet now in your hand of the nature of those accounts, which you delivered to lord Melville, at certain periods?

Mr. *Trotter*.—They are.

Mr. *Whitbread*.—Were the accounts so delivered by you, at certain periods, both on the chest and the current account, so signed as that paper in your hand is signed?

Mr. *Trotter*.—They were.

Mr. *Whitbread*.—To whom did you give the direction for the purchase of 2,000*l.* India stock, in 1792, for the benefit of lord Melville?

Mr. *Trotter*.—I can only judge from that circumstance, that most part of my transactions of that sort went through the house of Coutts and Company, and I have no doubt my directions were there placed.

Mr. *Whitbread*.—To whom were the directions given for the purchase of 10,000*l.* of the loyalty loan, in 1797?

Mr. *Trotter*.—I gave no directions respecting that, to the best of my recollection.

Mr. *Whitbread*.—To whom did you give directions for the purchase of the 7,000*l.* three per cent reduced?

Mr. *Trotter*.—I presume also to the house of Messieurs Coutts and Company.

Mr. *Whitbread*.—Does Mr. Philip Antrobus, the broker, act for that house?

Mr. *Trotter*.—I have heard so.

Mr. *Whitbread*.—Do you know that he did, at that time, act for that house?

Mr. *Trotter*.—I believe it, but I do not know it.

Mr. *Plumer*.—I beg to ask the honourable managers whether they will have occasion to call this witness again?

Mr. *Whitbread*.—I do not know that they will, but I do not say that they will not call him again.

Mr. *Plumer*.—I did not mean to interrupt their examination, if they go to other matters now, and to examine him upon the whole of his evidence hereafter.

Then *Alexander Trotter*, esq. was cross-examined as follows:

Mr. *Plumer*.—You speak of your being appointed paymaster in consequence of the recommendation you stated. Had you had an opportunity of being useful to lord Melville in some regulations respecting the office, previous to your being appointed by him to the office of paymaster?

Mr. *Trotter*.—I, very early after lord Melville's first appointment as treasurer of the navy, presented his lordship with a plan for new regulating the business of the office, which I have understood was much approved of by his lordship.

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Mr. *Plumer*.—In what year was that?

Mr. *Trotter*.—I fancy it was in 1782; it was a very short time after his lordship was first appointed treasurer of the navy.

Mr. *Plumer*.—Some time prior to your being appointed paymaster?

Mr. *Trotter*.—A great many years before.

Mr. *Plumer*.—In that interval, between the circumstance that first brought you to lord Melville's notice, and your appointment as paymaster, was any intercourse kept up between his lordship and you?

Mr. *Trotter*.—I believe I was known to his lordship during the time, but I had no particular intercourse with his lordship.

Mr. *Plumer*.—The first circumstance you were interrogated to, after that of your being appointed paymaster, was his lordship's acknowledgment of a balance in his hands of 10,000*l.* At the time lord Melville said that was in his hands, did he not at the same time say it was not applied to any private use or emolument of his own, but to public purposes, from whence it was likely there would be a loss?

Mr. *Trotter*.—His lordship expressed to me he was afraid that there might be a loss; the conversation might be very pointed, but I do not recollect it so much as to be able to say that his lordship actually stated it to be for public purposes, but it is at a very distant period, and it is not impossible he did.

Mr. *Plumer*.—Have you any the least recollection that lord Melville acknowledged that he had applied it to any purposes of private benefit to himself?

Mr. *Trotter*.—None.

Mr. *Plumer*.—Whether the sums for the purpose of paying the Exchequer fees, which you have stated, had not for some time been a fund in the hand of the paymaster, which he used for his own emolument, when not wanted by the public?

Mr. *Trotter*.—I had understood that they had always been in the hands of my predecessors, paymasters of the navy; and that the parts, which were not immediately required for the payment of the public fees, were made use of; and that as soon as the sum in their hands was reduced to under 3,000*l.* it was usual for the paymaster to make an application for a further sum of 3,000*l.* to be imprested into his hand for that purpose. That was the mode that was explained to me when I came into the office, and I received the balances remaining upon two ex-treasurerships; and, soon after my appointment to the office 3,000*l.* was put into my hands to pay the Exchequer fees upon the current treasurer-ship.

Mr. *Plumer*.—I think you said the money issued for the Exchequer fees, is issued in a different mode from the money issued for public service?

Mr. *Trotter*.—I did state so.

Mr. *Plumer*.—State wherein that difference consists?

S O



Mr. Trotter.—All monies issued from the Exchequer, to the treasurer of the navy, are in consequence of a letter from the different boards, connected with that office, desiring him to memorial the Treasury for such sums of money, excepting in the instance of Exchequer fees; he alone is acquainted when they are nearly exhausted, and when he finds them to be nearly exhausted, he includes an application for 3,000*l.* into any memorials to be sent to the Treasury, to be imprested into the treasurer's hands.

Mr. Plumer.—Is it to be understood then that all applications for other sums of money for the public service, must originate with some one of the boards?

Mr. Trotter.—The whole of the money.

Mr. Plumer.—There are different boards that give directions for issuing of money; can any money be issued from the Exchequer to carry on the naval service without a letter from one or other of those boards?

Mr. Trotter.—It cannot.

Mr. Plumer.—Does that letter, or a copy of it, accompany the memorial to the Treasury for the issue of that money?

Mr. Trotter.—It does.

Mr. Plumer.—Is that the case with respect to money that issues for Exchequer fees?

Mr. Trotter.—I have endeavoured to explain that it is not; it originates entirely from the paymaster, in fact, who is the judge of when that fund is nearly exhausted.

Mr. Plumer.—Was the course of office you have described, the same before the act of parliament, as it has been since the passing the act of the twenty-fifth of the King?

Mr. Trotter.—The same, I believe.

Mr. Plumer.—Is then the issuing Exchequer fees, a subject to which the regulation of the act of parliament, by the course of office applies?

Mr. Trotter.—I presume it is; as I believe the act of parliament directs all sums from the Exchequer to be issued to the Bank, and the money to pay Exchequer fees, is accordingly issued to the Bank.

Mr. Plumer.—Has all the detail and management of the treasurer's office been always left to the paymaster?

Mr. Trotter.—I believe it generally is, especially during the time in which I acted as paymaster to the navy, it certainly was, and altogether so in lord Melville's time; some subsequent treasurers have thought it necessary to attend the business of the office more minutely.

Mr. Plumer.—But during the whole period of time you have been acquainted with the office, has the execution of it in detail always been left with the paymaster?

Mr. Trotter.—Always, I believe.

Mr. Plumer.—Was that the case during the whole period of lord Melville's treasurership?

Mr. Trotter.—As far as I know it was.

Mr. Plumer.—Was the whole management and drawing for the public money entirely

left to you, during the period when you were paymaster?

Mr. Trotter.—I believe it was.

Mr. Plumer.—You stated that permission was given by lord Melville, to draw money from the Bank of England, to Coutts's bank. Whether the only reason represented by you, to lord Melville, for that measure, was not to facilitate the official convenience?

Mr. Trotter.—Entirely so, I always stated so; the convenience that would arise, and the greater security of the money.

Mr. Plumer.—State, if you can recollect, how you represented that it would facilitate the convenience of the office, that that transfer should take place?

Mr. Trotter.—I represented the inconvenience that would attend the payments from the distance of the Bank, and proposed to his lordship, that a banker nearer should be allowed to keep the money in his hands, till I found it necessary to issue it to the sub-accountants.

Mr. Plumer.—Did you state also to lord Melville, in what manner the money would be more secure?

Mr. Trotter.—I represented to him the danger of sending in drafts, to the Bank every day, by messengers, who were obliged to bring out the produce of these in cash to supply the daily payments.

Mr. Plumer.—Whether when this application was made by you, the office had not been removed from Broad street, where it had been before situated, to Somerset House?

Mr. Trotter.—I believe it had.

Mr. Plumer.—Though the paymaster makes no payment with his own hand, does not the paymaster furnish the supplies to the sub-accountants, for all the money that is daily paid?

Mr. Trotter.—He does.

Mr. Plumer.—Was there the least mention to lord Melville, at the time application was made for his permission to make the change you have stated, of any private emolument to be derived to any body from it?

Mr. Trotter.—None whatever; it was never in lord Melville's contemplation, and I do not remember that it was in my own, at that time.

Mr. Plumer.—Was the permission which was given to draw money from the Bank, to be deposited till it was wanted, in Coutts's bank, entirely confined to the money that would be wanted for official convenience?

Mr. Trotter.—I do not know that the conversation extended to so great a length, as to go into that minute part of the subject.

Mr. Plumer.—But was there then, or at any subsequent time, any permission given by lord Melville to draw monies from the Bank, for any other purpose?

Mr. Trotter.—Never.

Mr. Plumer.—I understood you to state, that you received lord Melville's salary, as treasurer of the navy?

Mr. Trotter.—I did in most instances; I



had thought universally so, till a statement was made from the Pay-office, in which I found some few payments had been made to Mr. Wilson upon my account, and to others upon my account, and one payment to his lordship.

Mr. Plumer.—Besides the salary of the treasurer which you received, did you also receive on lord Melville's account, during the whole period of acting as his agent, various remittances from Scotland and other places, on his lordship's account, to a considerable amount?

Mr. Trotter.—I did, to a large amount.

Mr. Plumer.—You speak of your attending lord Melville with the statement of his accounts, which was signed by his lordship, as I understood you to state, and duplicates of the accounts left with him?

Mr. Trotter.—So I stated the fact.

Mr. Plumer.—When you attended his lordship upon the subject of private business, and business of the nature you have stated, did you observe whether his lordship gave any particular attention to the business?

Mr. Trotter.—I was very much concerned that I never could draw lord Melville's attention particularly to the subject of his private accounts.

Mr. Plumer.—Were not, in most instances, the accounts that were produced brought by you, signed immediately, upon the confidence lord Melville reposed in you, without any examination?

Mr. Trotter.—I always exhibited the accounts to his lordship for his examination, and he may have looked at them, but I am conscious that he never attended to them particularly.

Mr. Plumer.—Whenever you had occasion to attend his lordship upon any business of a public nature, or any business that related to the detail and management of the office, in which his own private interest was not concerned, did you find lord Melville equally inattentive, or directly to the reverse?

Mr. Trotter.—I must state directly the reverse. Lord Melville never interrupted me in any representations that I made to him respecting the public business of the office, unless it was merely telling me he had not time to attend to me at that time, and appointing another time, when I laid the subject before him.

Mr. Plumer.—Am I to understand you, that when you waited upon lord Melville about the public accounts in which he was not personally interested, you were sure to have his attention, but could not get his attention in the same manner to his own private accounts?

Mr. Trotter.—That is what I mean to state.

Mr. Plumer.—Whether lord Melville did at any time require or receive from you any receipt or voucher, or document of any kind upon these accounts?

Mr. Trotter.—I do not recollect that I ever gave him a receipt for any money in my life.

Mr. Plumer.—Whenever you have paid money for him, did his lordship ever desire to see any voucher for that payment, or take it entirely upon the representation you gave of it?

Mr. Trotter.—I never failed to present the documents and vouchers to his lordship, but I do not recollect any instance in which he required it.

Mr. Plumer.—Have you any distinct recollection that can enable you to state what was the form or the contents of the bond of this 4,000*l.* or whether it was not a bond in the usual form?

Mr. Trotter.—I have no recollection of it whatever, only I believe it did not bear interest.

Mr. Plumer.—Have you any recollection whether its not bearing interest was or not specified in the bond?

Mr. Trotter.—I have no distinct recollection, but I do not believe that it was.

Mr. Plumer.—The first purchase you speak to was 2,000*l.* East India stock. Whether, after the documents you have seen on the subject, you have now any memory or recollection upon the subject?

Mr. Trotter.—I recollect generally that lord Melville wanted to be possessed of a further qualification of East India stock, and he begged me to procure it for him, but whether he told me that he would immediately repay me the money or not I do not recollect.

Mr. Plumer.—Whether upon that occasion, or upon any other, lord Melville ever directed you to lay out any part of the public money in your hands for the use and benefit of lord Melville?

Mr. Trotter.—He never did under the specific name of public money, or any money bearing that description.

Mr. Plumer.—In every instance in which this stock was purchased by you, was it understood by lord Melville to be purchased either out of lord Melville's own funds, or from private funds lent him by you?

Mr. Trotter.—I cannot precisely say that; I do not know any thing to the contrary, but I do not know what lord Melville's conceptions may have been, he never expressed himself to the contrary to me.

Mr. Plumer.—Is there any instance in which prior to the purchase of any stock, it was mentioned to lord Melville by you, that it was intended to be purchased out of the public money, except in the instance of the purchase of East India stock?

Mr. Trotter.—Never to the best of my recollection.

Mr. Plumer.—Am I to understand you to state, that in the only instance where that was proposed, it was indignantly rejected?

Mr. Trotter.—I mean so to be understood.

Mr. Plumer.—I understood you to state that you did not originally give directions, nor are cognizant by whom the direction was given for the purchase of the subscription of the 10,000*l.* loyalty loan?



Mr. Trotter.—I am unacquainted who gave directions respecting that loyalty loan; at least, I have no recollection of that; and I do not find that it passed through me, or by my orders.

Mr. Plumer.—Can you recollect, whether the first instalment that was paid for that loyalty loan, was not paid out of the private funds belonging to lord Melville?

Mr. Trotter.—It may have been so, but I do not recollect the circumstance.

Mr. Plumer.—You stated, that you had paid several instalments, from time to time, upon that loyalty stock?

Mr. Trotter.—I have.

Mr. Plumer.—Was it at any time communicated to lord Melville, whilst these payments were making out, out of what funds these advances were made?

Mr. Trotter.—Never; I believe they were made in consequence of demands which were made upon lord Melville, and which I satisfied without any instructions from his lordship.

Mr. Plumer.—Can you recollect about what period it was, that the last of those payments, in respect of this 10,000*l.* loyalty loan, was made?

Mr. Trotter.—I do not; but my accounts with Mr. Coutts must show it.

Mr. Plumer.—Do you remember the year?

Mr. Trotter.—I have no recollection of it.

Mr. Plumer.—Do you recollect whether it was about September 1797?

Mr. Trotter.—I have no recollection of it.

Mr. Plumer.—Do you recollect that soon after the last instalment was paid upon that account, securities were given by lord Melville, and a power of attorney for the sale of that and all his other stocks, to secure the repayment of what was due?

Mr. Trotter.—I perfectly recollect the circumstance.

Mr. Plumer.—Did those securities cover an ample fund for the repayment of all those sums which had been advanced upon that account?

Mr. Trotter.—They did.

Mr. Plumer.—You stated, I think, that you directed stock, to the amount of 7,000*l.* three per cents, to be purchased for lord Melville; was that purchase made by any directions from lord Melville?

Mr. Trotter.—It was made without any directions from his lordship.

Mr. Plumer.—How came that purchase to be made, without any directions from lord Melville?

Mr. Trotter.—I made it in the general management of lord Melville's affairs: I believe a sum of money had come into my hands, at that time, for his lordship, and I thought it was proper to invest it in some manner, to produce an interest to his lordship.

Mr. Plumer.—Am I to understand, that funds had come into your hands, which, before that time, had been carrying a productive interest to lord Melville?

Mr. Trotter.—I believe they had, either previously, or a few days afterwards; one of the payments was, I think, upon a bill, which might not have been due upon the very day I made the purchase; but I believe the bill had come into my hands previous to my making the purchase.

Mr. Plumer.—Was any precise communication ever made to lord Melville, respecting the mode in which that purchase had been made, or any particulars respecting it?

Mr. Trotter.—I probably mentioned it when I presented my accounts to him, but I do not recollect any particular conversation that I had with his lordship on the subject.

Mr. Plumer.—You have stated that lord Melville indignantly rejected the offer of applying the public money to the purchase of India stock, and you then proposed to furnish him with the money, by procuring it of a relation?

Mr. Trotter.—I did.

Mr. Plumer.—Was that relation's name mentioned to lord Melville?

Mr. Trotter.—I mentioned my relation's name, it was Mr. Montague Lind.

Mr. Plumer.—Was any security ever demanded of lord Melville, in respect to the loan that had been made for that purchase of stock?

Mr. Trotter.—None; because I had represented to his lordship that I thought I could procure it on the security of the stock being vested in the person's name of whom I should borrow the money.

Mr. Plumer.—Was the stock, after its purchase, transferred as a security to cover the money that was advanced for the purchase of it?

Mr. Trotter.—It was not, in fact; it was invested in Mr. Lind's name for my account.

Mr. Plumer.—Did it ever stand in the name of lord Melville?

Mr. Trotter.—It never did.

Mr. Plumer.—At first you stated, that the amount of the interest, for the money borrowed for this purchase, exceeded the dividend?

Mr. Trotter.—I believe it to have done so.

Mr. Plumer.—When that was the case, was lord Melville charged with the difference?

Mr. Trotter.—He was regularly charged with the interest, and got credit by the dividends, whatever they were.

Mr. Plumer.—Then, at that time, was he not an annual loser by the purchase of that stock?

Mr. Trotter.—I believe his lordship to have been so, inasmuch as the interest exceeded the dividends.

Mr. Plumer.—When this purchase of East India stock was made, was the prospect an immediate rise, or that in the course of time it would rise?

Mr. Trotter.—His lordship certainly alluded to a distant prospect, from the progressive state of the affairs of India towards prosperity.



Mr. Plumer.—Whether lord Melville ever knew that the person who advanced this money, was any other person than Mr. Lind, until after the publication of that fact, in the tenth report, or from the late inquiries?

Mr. Trotter.—I never thought it necessary to inform his lordship of it, and I have no reason to believe that he ever knew it.

Mr. Plumer.—Have you the least reason to believe that lord Melville knew, or supposed any part of that advance to be public money?

Mr. Trotter.—I have no reason whatever.

Mr. Plumer.—You spoke of two sums, one paid to sir William Forbes and Company, and the other to Mansfield and Company, the one of 2,000*l.*, the other of 3,300*l.*; have you any recollection of the funds, from whence those two sums came, or any thing respecting them?

Mr. Trotter.—I have none whatever, excepting what I gather from an examination of Mr. Coutts's books, from which I see that they were advances from his account, and from my own letters.

Mr. Plumer.—Have you any reason to doubt, but that the payments made upon that subject, were repayed out of the private funds of lord Melville?

Mr. Trotter.—I have no reason to doubt it, as there were frequent payments subsequent to that, and they went in reduction of the general account, in which those sums were included.

Mr. Plumer.—You were asked, whether lord Melville, at any time, imposed any restrictions upon you, with respect to the quantum of your drafts from the Bank, or specified what were to be the limits of them, under either head; I wish to ask whether my lord Melville ever said any thing to you upon the subject?

Mr. Trotter.—Never; the subject was never mentioned.

Mr. Plumer.—You were interrogated respecting a million of money, that was once drawn from the Bank; was that circumstance known to lord Melville?

Mr. Trotter.—I am persuaded I never communicated the circumstance to lord Melville; whether he may have learnt it from other quarters or not, I do not know, as I never made any secret of it, but mentioned it frequently.

Mr. Plumer.—What was that drawing of money to that large amount?

Mr. Trotter.—It was the amount of several months Navy bills, that were directed to be paid off at the time, for which a sum of upwards of three millions was issued to me, upon one particular day, and I chose to draw one million from the Bank, and put it into the hands of Coutts and Company, in order to accommodate the bill-holders, at the west-end of the town. And when the bills were presented a few days afterwards (and which intermediate time was necessary, from the business of the Navy-office, in which they

calculated the interest upon those bills) when they were presented I drew, as the bill-holders preferred, my drafts upon Coutts's bank, in discharge of their bills, or upon the Bank.

Mr. Plumer.—How long was it before it was all paid away?

Mr. Trotter.—I think it was five or six days before the interest was calculated at the office, and all arrangements made before the bills began to be presented; but after they began to be presented, I fancy it was paid as close up to the balance as other payments of the navy, in the course of a very few days afterwards: there is always a sum that remains unclaimed.

Mr. Plumer.—Have you been much conversant with figures, and made them much the subject of attention?

Mr. Trotter.—I have.

Mr. Plumer.—Was not the whole business of the accounts, both of the office and all the private accounts of lord Melville, left entirely in your management?

Mr. Trotter.—The whole of the public accounts were left in my management, and such of his private accounts as were put under my management.

Mr. Plumer.—You have been asked as to your own use of the public money, removed from the Bank to Messieurs Coutts; I understood you to say, that you made use of it, in point of fact, for your own benefit?

Mr. Trotter.—I certainly made use of that part which I found was not likely to be claimed, for my own profit.

Mr. Plumer.—In what mode was that made use of?

Mr. Trotter.—Generally, by lending it at interest; at other times by investing it in Exchequer or Navy bills, or other government securities.

Mr. Plumer.—Was that to a very considerable amount?

Mr. Trotter.—It was.

Mr. Plumer.—Were the whole profit and emolument, derived from that mode of laying out the money, which you have described, entirely your own?

Mr. Trotter.—Entirely.

Mr. Plumer.—Was any intimation or knowledge ever communicated to lord Melville of the public money having been so used.

Mr. Trotter.—I never made any such communication to lord Melville.

Mr. Plumer.—Whether, during the period that you have spoken of having acted as paymaster to lord Melville, and while those transactions were going on, the public service of the navy at any time suffered the smallest loss, disadvantage, or interruption, in consequence of the transaction you have spoken of?

Mr. Trotter.—I do not know any instance wherein the public have suffered any loss, obstruction, or delay in the public payments, from the use that has been made of public



money, or the manner in which I kept my balances elsewhere than in the Bank.

Mr. Plumer.--Was the public money at all times safe, and were proper securities taken for it at all those times?

Mr. Trotter.--I believe it at all times to have been so.

Mr. Plumer.--Was there any one circumstance which happened during the period of lord Melville's executing this office, that should have called his attention, from any interruption the public service received during any part of the period, to the use that was making of the public money?

Mr. Trotter.--I never heard of any.

Mr. Plumer.--Whether during the period of lord Melville's executing his office, sums to the amount of a hundred and twenty millions did not pass through his lordship's hands or through his office?

Mr. Trotter.--More or less, I believe so.

Mr. Plumer.--During all that time, was there a loss sustained by the public, or any impediment suffered by them of one single farthing?

Mr. Trotter.--Not in consequence of the transactions which have been particularly alluded to, to the best of my recollection.

Mr. Plumer.--You spoke of some regulations approved and adopted by lord Melville; were those regulations calculated to increase the balance in the hands of the paymaster or treasurer, or directly the reverse?

Mr. Trotter.--I do not think they had any influence either one way or the other; it was merely a different mode of making up the accounts.

Mr. Plumer.--I mean those regulations that were made by which seamen were enabled to make allotments for the maintenance of their families in their absence, or to facilitate the receipt of money due to them; whether regulations to that effect were not made, and whether the effects of them did not tend to reduce, and not increase the balances?

Mr. Trotter.--Certainly, I thought the learned counsel alluded to the regulations I proposed to his lordship in 1782.

Mr. Plumer.--At what period in 1802 did Mr. Bathurst alter the mode of making the payments for the future?

Mr. Trotter.--I am not able to state that.

Mr. Plumer.--Was it in June?

Mr. Trotter.--I do not know.

Mr. Plumer.--Whether that alteration was not entirely made to obviate any inconvenience of a similar nature in future, before any inquiry had taken place before the commissioners of naval inquiry. Whether the evil was not remedied before that inquiry?

Mr. Trotter.--I believe it was.

Mr. Plumer.--Has that course been continued ever since?

Mr. Trotter.--It has, to the best of my knowledge.

Mr. Plumer.--What is that remedy which has been adopted?

Mr. Trotter.--That the money shall remain in the Bank, until wanted for payment, as nearly as possible.

Mr. Plumer.--Is the money remaining in the Bank to be written off from one account to the other account?

Mr. Trotter.--Instead of drawing the money to Messieurs Coutts's house, and issuing to the sub-accountants from that account, the money is made over to one of the sub-accountant's account at the Bank, and he draws himself upon that account. The whole difference is, that the money remains in the sub-accountant's account at the Bank, instead of the sub-accountant's account at Messieurs Coutts's.

Mr. Plumer.--Does it then, in consequence of this alteration, become a private account kept with the Bank by each sub-accountant, when a certain amount is written off to the credit of that sub-accountant?

Mr. Trotter.--I believe that the accountant has a perfect control over the account. I do not know what constitutes it a public account further than being kept in the Bank.

Mr. Plumer.--Then, after the credit is written over from the treasurer's account to each sub-accountant's account, each sub-accountant has the power of drawing out the money as he shall want it, or as he shall think fit?

Mr. Trotter.--He has as much the control over it as he had when the money was put into his name in his account at Mr. Coutts's, as far as I understand.

Mr. Plumer.--If no permission had been given at all, of drawing from the Bank to Coutts's bank, as a place of temporary deposit; whether all the same use might not have been made of the public money by drafts in the same way at the Bank?

Mr. Trotter.--Certainly; but it might have been considered a greater dereliction of my duty.

Mr. Plumer.--Whether the same use might not have been made of the public money, being laid out for private benefit, without its reaching in the intermediate transit of it, any private bank?

Mr. Trotter.--That is exactly the question I answered before, that I think it might be made use of in exactly the same manner; but that if I had done so, I think it might be considered as a still greater dereliction of duty.

Mr. Plumer.--Whether the small payments that are daily made in this great department, the navy department, can be made any other-wise, than by cash in the hands of the sub-accountants?

Mr. Trotter.--I do not apprehend it to be possible; and I am told the present treasurer attempted it, and could not carry it into execution.

Mr. Plumer.--Is the amount of those payments, and the number of them that are daily made, such as could not with any possible practical convenience, be made by drafts upon the Bank?



Mr. Trotter.—It certainly could not be done by any means, in my opinion.

Mr. Plumer.—How low, in point of value, do some of those payments go?

Mr. Trotter.—Certainly as low as one shilling, some of them.

Mr. Plumer.—Are they very numerous under ten pounds, or two pounds, or even one pound in value?

Mr. Trotter.—I believe there are many thousands paid monthly, lower than ten pounds, and even lower than two pounds.

Mr. Plumer.—State, as nearly as you can, as to what was the average amount of money due to the payees of assigned bills?

Mr. Trotter.—I never had occasion to make a calculation of the average, excepting once, and then I was assisted by the then treasurer of the navy, Mr. Canning; and we found it averaged a considerable number of years about 143,000*l*.

Mr. Plumer.—What do you mean by a balance of that nature being due to the payees of assigned bills?

Mr. Trotter.—It is the amount of bills which the several boards have drawn upon the treasurer of the navy, and which have been put into the hands of the persons who are entitled to receive them, but who have not demanded the payment of them; the treasurer, in that situation, stands exactly in the situation of a banker, in which a balance accrues in consequence of unclaimed demands upon him.

Mr. Plumer.—When bills are drawn upon the treasurer, is the list of the bills so drawn communicated to the treasurer?

Mr. Trotter.—A list is sent from the board, of the bills which they assign upon the treasurer for that day, by which the treasurer understands he is to be prepared to make payment of bills to that amount; but bills to that amount seldom or never come in all together; the whole amount is not generally presented for some time, by which means an aggregate balance is formed and created, which lies unclaimed in the treasurer's hands.

Mr. Plumer.—From the moment that list is communicated to the treasurer, is it the course of the office, to credit his account, for the amount of the bills that are so drawn?

Mr. Trotter.—It is the course of the Navy-office, and of the different offices whose boards draw upon the treasurer of the Navy-office, to give the treasurer credit for the full amount of those assignments.

Mr. Plumer.—Are those bills payable at sight, the instant they are presented?

Mr. Trotter.—They are, excepting the ninety day bills, which are never presented till the day they are due.

Mr. Plumer.—Are all the other bills payable to the payees at sight?

Mr. Trotter.—They are.

Mr. Plumer.—Is it competent to them to call and receive the money whenever they think fit?

Mr. Trotter.—It is.

Mr. Plumer.—If any delay takes place, or any balance remains unclaimed for any period of time, is that entirely the act of the holders of the bills?

Mr. Trotter.—It depends entirely upon the holders of the bills, or upon other causes not dependant upon the treasurer of the navy.

Mr. Plumer.—Is the fund that is thus assigned, considered as reserved for their use during that interval?

Mr. Trotter.—I understand that admits of different opinions; it is certainly my opinion that it is the property of the holders of the bills.

Mr. Plumer.—From the moment the list is received of the bills assigned, I understand you to say that the treasurer must be ready to satisfy them when called for?

Mr. Trotter.—He certainly may be called upon; I beg to explain that, I have said there never has been any delay of a payment of a navy or victualling bill; but there is another description of bills, which are not called navy or victualling bills, which I did not advert to at that time. All navy or victualling bills are drawn assignable out of a certain sum of money received at the Exchequer; as long as that fund lasts, the bills are drawn from that fund: but there is another description of bills, not to a great amount, which are drawn upon the general fund of wages, without specifying any particular sum; and when the fund under the head of wages has been low, the navy board have thought proper, to desire the treasurer to cease making payments of those bills, until a supply, under the head of wages, should be received from the Treasury.

Mr. Plumer.—Does that delay in any respect proceed from any act either of the treasurer or his paymaster?

Mr. Trotter.—Not in any degree whatever.

Mr. Plumer.—You have been asked about drafts made in the name of the right honourable Henry Dundas, Mr. Dundas, and Henry Dundas; have you discovered instances, which lead you to believe, that the name of Mr. Dundas was sometimes inserted, when the money was not for him, nor applied to his use?

Mr. Trotter.—I do not recollect having discovered any such instances; they were generally to his use, or collaterally for his use.

Mr. Plumer.—Have you not found instances, of money being directed to be paid in the name of Mr. Dundas, which, in point of fact, was not so applied?

Mr. Trotter.—I have found instances, wherein the money was not directly paid to Mr. Dundas; but I have found no instances, wherein the money was not in some measure or other, connected with Mr. Dundas.

Mr. Plumer.—There is an instance on the 24th of July 1789.—“To cash paid Henry Dundas 1,764*l*. 18*s*. 10*d*.”?

Mr. Trotter.—That was a transfer from one of my own accounts to the other, the same



sum was advanced to lord Melville in two different sums, and charged to him in my other accounts with Messieurs Coutts, so that it came doubly charged to Mr. Dundas.

Mr. Plumer.—Do you recollect any entry of this nature, “To the right honorable Henry Dundas, act of parliament account,” or “Pay Henry Dundas account 2,500*l*.” Whether instances do not occur of entries of that kind which in fact, were never paid to Mr. Dundas, or on his account?

Mr. Trotter.—There are entries of that description, but they are very different from pay Mr. Dundas, they are, “Pay Mr. Dundas’s new account;” which means that they were paid into his new account at the Bank, or paid into his first account, in which case they are paid into his first account at the Bank; there his name is made use of, without his having any connexion with the money.

Mr. Plumer.—Whether there are not entries to the same effect, where it is not the act of parliament account, or the new account, but simpliciter “Henry Dundas,” or “the right honorable Henry Dundas,” without any addition?

Mr. Trotter.—I am unable to explain that, unless I knew the specific entries; I should rather apprehend that they went to the credit of his account, at the same house upon which I drew.

Mr. Plumer.—I understand the release to have been executed by you in London?

Mr. Trotter.—Yes.

Mr. Plumer.—Was lord Melville at that time in Scotland?

Mr. Trotter.—He was.

Mr. Plumer.—Were any directions given by lord Melville, as to the form of that release, or any particular clause, which it should contain?

Mr. Trotter.—None whatever, to the best of my recollection.

Mr. Plumer.—An account has been given of your having destroyed some books of account; was any one book of that sort, destroyed by any directions, or any previous communication of it to lord Melville?

Mr. Trotter.—None whatever.

Mr. Plumer.—Was that circumstance ever known, to your knowledge or belief, to lord Melville, till after the publication of the tenth report?

Mr. Trotter.—I do not know that his lordship ever was acquainted with it before that time, but I only speak of knowledge, because I may have communicated it to his lordship sooner. I do not recollect the particular time when I communicated it to his lordship.

Mr. Plumer.—Are you quite sure, that it was long after the books were in fact destroyed, that the circumstance was communicated to lord Melville?

Mr. Trotter.—Perfectly so.

Mr. Plumer.—Was the mode in which you kept your account with Mr. Coutts, and the mixture of private and public money, entirely

your own act, without any knowledge of lord Melville?

Mr. Trotter.—It was an act entirely my own, and lord Melville never had any knowledge whatever, of the manner in which I kept my accounts at Mr. Coutts’.

Mr. Plumer.—Whether the destruction of the books of account by you, was done in the least for any purpose of concealment, or benefit to my lord Melville?

Mr. Trotter.—I had not lord Melville’s interest in contemplation at the time I destroyed the books.

Mr. Plumer.—Had you any money transactions with Mr. Sprot?

Mr. Trotter.—I have had considerable transactions with Mr. Sprot.

Mr. Plumer.—Was any one of those transactions ever communicated to lord Melville, or was ever the least benefit derived to his lordship from them?

Mr. Trotter.—I do not believe, that lord Melville ever had the smallest knowledge of my transactions with Mr. Sprot, nor did he derive any advantage from them.

Mr. Plumer.—State generally, without entering into detail, whether the use, which you made of that public money to your own emolument, was to a very considerable amount?

Mr. Trotter.—It certainly was to what I call a considerable amount.

Mr. Plumer.—Was it a use made commonly from month to month?

Mr. Trotter.—It was.

Mr. Plumer.—I understand you to have stated before, that the whole benefit derived from all that use of the public money, that went on from month to month, was exclusively your own?

Mr. Trotter.—All excepting the sums which I have stated to have been advanced for lord Melville, upon which I do not know that any profit was made, excepting as far as I have explained.

Mr. Plumer.—Was not the difference between the Bank balance and the official balance, created by money drawn by you from time to time from the Bank, for the purposes you have before stated?

Mr. Trotter.—The whole was included in that difference.

Mr. Plumer.—At the time lord Melville went out of office in 1800, were there more balances due upon the ex-treasurer’s account of 1782; the first treasurership and the first part of the second treasurership, did they together amount to more than 10,000*l*?

Mr. Trotter.—I think they each exceeded 5,000*l*.; consequently they must have collectively exceeded 10,000*l*. but only a few hundreds,—it was about 11,000*l*. I believe.

Mr. Plumer.—Had any part of that sum, during all that period, been ever wanted for the public service?

Mr. Trotter.—Certainly not, to the best of my recollection.

Mr. Plumer.—Was there, to your know-



ledge or belief, any delay in passing the accounts of the ex-treasurers, so as to retain that balance in their hands?

Mr. Trotter.—There was a great delay in passing the accounts, but not at all proceeding from the treasurer, or the paymaster.

Mr. Plumer.—What was the cause of that delay?

Mr. Trotter.—From the necessity of a co-operation between the clerks of the Navy-office and the Pay office. The Navy-office had thought proper, to withdraw their clerks, from the business of making up the accounts of the ex-treasurer, in order to send them to the out ports, and otherwise to disperse them in the current business of the office, and the treasurer found himself under the necessity of doing the same thing.

Mr. Plumer.—Was lord Melville, if these obstacles had not occurred, at all times ready to pass his accounts?

Mr. Trotter.—The passing the accounts, I understand, to be the making up the accounts which did not depend upon lord Melville.

Mr. Plumer.—Whether the quantum of the balance issued to the treasurer at any time, depended in the least upon any act either of lord Melville or his paymaster?

Mr. Trotter.—Certainly not.

Mr. Plumer.—Was any one act, at any one period during the whole time of lord Melville's treasurership, done by either him or his paymaster to augment those balances?

Mr. Trotter.—It was not in the power of either of us to augment the balances by any act that we could have done, and consequently neither of us ever to my knowledge committed any act so as to produce that effect.

Mr. Plumer.—During the whole period, was the actual quantum of official balance fairly and properly communicated to the boards?

Mr. Trotter.—The office returned accounts every fortnight to the different boards, in which the balance of the treasurer was stated, and they were regularly made acquainted with it.

Mr. Plumer.—I do not recollect any other questions which I wish to put, but probably in so extensive an examination some may afterwards suggest themselves, which I trust the Court will have the goodness to permit me to put.

Mr. Whitbread.—The Commons have several questions to put in re-examination of Mr. Trotter; after the cross-examination of the learned counsel, there are many parts upon which it will be necessary to put questions, to bring back the true understanding of it before the Court.

Adjourned to the Chamber of Parliament.

SEVENTH DAY.

Tuesday, May 6, 1806.

The Lords and others came from the Chamber.  
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ber of Parliament, into Westminster Hall, in the same order as on the first day of the trial.

Lord Chancellor.—Gentlemen, managers for the Commons, you may now proceed with your evidence, and the lords will be pleased to give their attention.

Mr. Whitbread.—My lords, the Commons propose to your lordships, to call back Mr. Alexander Trotter, for the purpose of re-examining him, upon some parts of the cross-examination of the counsel. Upon other parts they will not trouble your lordships, that cross-examination having gone to points not included in their articles.

Then Alexander Trotter, esq., was again called in, and re-examined as follows:

Mr. Whitbread.—Did lord Melville ever transact any part of the business of the Pay-office, or give any directions whatever concerning it?—by business I mean the official business of the payments and receipts?

Mr. Trotter.—I was going to make that distinction, that in the actual execution of business lord Melville seldom or never interfered; but he paid attention, at all times, to the representations of difficult cases, and proposals that were made for improving the business of the office.

Mr. Whitbread.—Were any representations ever made to him, concerning the office payments, or receipts, in the ordinary course of business of the office, and not with a view to any new regulations?

Mr. Trotter.—In the ordinary course of the office, no communications were made to lord Melville; but in any extraordinary cases, such as I thought it was necessary to represent to lord Melville, I did not fail to do so.

Mr. Whitbread.—Of what nature were those cases?

Mr. Trotter.—There are such a variety that I can scarce mention them; but if any person made a claim that he was not strictly entitled to, or that some doubt had arisen upon it, if lord Melville was near the office, I commonly applied to him to know what I ought to do upon such an occasion.

Mr. Whitbread.—Did you, on those occasions, submit the books of the office to his lordship?

Mr. Trotter.—If the cases required it I did.

Mr. Whitbread.—Did such cases often occur?

Mr. Trotter.—Very seldom.

Mr. Whitbread.—Did you ever pay any money into the hands of lord Melville, personally?

Mr. Trotter.—I do not recollect having done so; I may have paid his salary once, or small sums of money; but I do not recollect any particulars respecting it.

Mr. Whitbread.—Did you ever receive from lord Melville, any money into your own hands, which required a receipt?

Mr. Trotter.—I have received money from



lord Melville, but I do not recollect ever having given his lordship a receipt.

Mr. *Whitbread*.—To what amount were those sums which so passed from hand to hand, from the treasurer to the paymaster?

Mr. *Trotter*.—I have only an impression upon my mind, that I have received considerable sums from lord Melville, but do not recollect the particulars of any.

Mr. *Whitbread*.—The last question applied to payments made to lord Melville?

Mr. *Trotter*.—I beg to have the question repeated, as I misunderstood it.

Mr. *Whitbread*.—Did you ever pay to lord Melville personally, any sums of money which required a receipt from his lordship?

Mr. *Trotter*.—I do not think I ever paid any sums so large as to require a receipt, excepting that I paid his salary; in one instance I find his lordship received it; and then he would sign the office receipt for his salary.

Mr. *Whitbread*.—Did he sign such an office receipt?

Mr. *Trotter*.—The whole is but a faint impression upon my mind; if I presented it for his signature, no doubt he signed it, but I do not recollect the particulars.

Mr. *Whitbread*.—You stated that lord Melville was inattentive to his private affairs: before that you stated that lord Melville actually signed all the private accounts presented to him. Did those accounts contain an history of your private money transactions? Did you give a proper account of the history of those private transactions in the accounts so delivered to lord Melville, which he was in the course of signing?

Mr. *Trotter*.—I did.

Mr. *Whitbread*.—Did lord Melville always sign them?

Mr. *Trotter*.—I do not recollect any instance to the contrary.

Mr. *Whitbread*.—Was the bond which was stated yesterday, to have been given for 4,000*l.* in an early part of your connexion with the treasurer of the navy, given up or kept by you?

Mr. *Trotter*.—I believe it was given up and destroyed. It is so many years ago that I do not recollect exactly what became of it; but I believe it was given up.

Mr. *Whitbread*.—Upon what occasion was it given up to lord Melville?

Mr. *Trotter*.—From payments having been made upon that account which exceeded that 4,000*l.* in which case I did not think it was proper to keep the bond.

Mr. *Whitbread*.—Was the account stated and balanced accurately, at the precise time at which the bond was given up?

Mr. *Trotter*.—I believe it was not, I do not recollect that it was.

Mr. *Whitbread*.—Is the Court to understand that the account current, of a sum, in which account that bond applied, and which sum formed the first item of that account was

still an open account current at the time the bond was given up.\*

Mr. *Trotter*.—I believe it was.

Mr. *Whitbread*.—When lord Melville gave orders or directions to you to pay money on his account, did he specify at all out of what fund that money was to be paid?

Mr. *Trotter*.—I do not recollect any instance in which his lordship so specified.

Mr. *Whitbread*.—Was there any difference in the mode of lord Melville's application to you, at the times when he wished money to be debited to him in the account current, and at the times in which he wished money to be debited to you in the Chest account?

Mr. *Plumer*.—I submit to your lordships, that question is not a proper one, since it assumes, that lord Melville had made such a distinction.

Mr. *Whitbread*.—I will change the question.---Did lord Melville ever make any distinction in his mode of application to you, when you were to debit his account in one or the other way?

Mr. *Trotter*.---In manner, I conceive his lordship did.

Mr. *Whitbread*.---What was his manner or mode of speaking and addressing you, at the time that you understood he wished to have money debited in the account current?

Mr. *Plumer*.---I have not yet heard that the witness has said that any part was to be carried to the Chest account.

Mr. *Whitbread*.---I submit whether that is not a proper question to be put.

Mr. *Plumer*.---I wish to know whether lord Melville ever expressed any wish to have any money debited to the account current? It assumes that as a fact.

Lord Chancellor.---Put the question, whether lord Melville ever did direct any money to be debited to his Chest account? That would be a fit preliminary question.

Mr. *Whitbread*.---Did lord Melville, by any words, or any mode, suggest, or in any way ever convey to you, an intimation that he wished a certain sum of money, advanced to him, should be debited to him in his account current?

Mr. *Trotter*.---I can only speak in general terms, as different circumstances would of course attend different payments upon that account; and, in speaking in those general terms, I say his lordship would probably enter into an explanation of monies which he expected to receive soon; and, under that impression he requested me to accommodate him with a sum, they seldom were large sums, until such times as payments came into his hands. I only speak that in general terms.

Mr. *Whitbread*.---When such request had

\* This question is copied correctly from the Report published by the authority of the House of Peers, but it is not easily intelligible.



been conveyed to you, to which of those two accounts you have stated to be opened, between lord Melville and yourself, was that money debited?

Mr. Trotter.—The account current.

Mr. Whitbread.—Was there any other mode of application described, in the way I before stated to you, when lord Melville wished it to be debited to any other account?

Mr. Trotter.—I can to this question also only answer in general terms. His lordship generally required, that such a sum of money should be paid, without coming to any explanation with me at all upon the subject.

Mr. Whitbread.—Was that requisition, which you are now alluding to, in the nature of a command from lord Melville to you for that purpose?

Mr. Trotter.—I considered it as such.

Mr. Whitbread.—Would you have thought yourself bound to debit lord Melville for any sum he had chosen to require on the Chest account?

Mr. Plumer.—Surely that is not a question, what he would have done. The question is, what he did?

Mr. Whitbread.—Did you ever make any remonstrance upon the magnitude of any sum that was advanced to lord Melville, or on his account, that was afterwards carried to the Chest account?

Mr. Trotter.—I never did, because it never interfered with the convenience of the office, as a much greater sum than lord Melville ever commanded, under those circumstances, might have been spared from the unclaimed balances.

Mr. Whitbread.—Did you ever hold any conversation with lord Melville, on the situation that you held in the Navy-pay-office, expressive of your gratitude for having been placed in that situation?

Mr. Plumer.—I do not object to this question; but would only just observe, this is certainly going to a point to which nothing in the cross-examination led: it is perfectly new matter.

Mr. Whitbread.—I will waive the question. Could any body have drawn the money from Coutts' which was placed there by you except yourself, or some person vested with your special authority?

Mr. Trotter.—It appears to me, that that is a matter more for the determination of Mr. Coutts than myself, as I do not know what Mr. Coutts would have done under the circumstances of a person unauthorized presenting a draft.

Mr. Whitbread.—Supposing any third person unauthorized by you had presented a draft for payment upon Coutts, and if Coutts had debited you in your account for such unauthorized payments by him, should you have conceived Mr. Coutts had acted honestly or properly by you?

Mr. Trotter.—That depends entirely upon the circumstances which had accompanied the

transaction. I should certainly think that Mr. Coutts had done me a favour by granting it to certain people under certain situations, when I should have been very much surprised at it in other situations.

Mr. Whitbread.—Could any body have received your money from Mark Sprot, Montague Lind, and others, unless vested with your especial authority, excepting yourself?

Mr. Trotter.—I conceive the same answer to apply to this case, that I have given to the case of money supposed to have been demanded from Mr. Coutts.

Mr. Whitbread.—Could any body have had the power of selling, or changing the securities taken by you for public money, unless specifically authorized by you?

Mr. Trotter.—Mr. Thomas Wilson had a general authority from me.

Mr. Whitbread.—Had any other person?

Mr. Trotter.—I believe not, I do not recollect any other.

Mr. Whitbread.—Had the treasurer of the navy himself any given authority, vesting him with the power of controlling your private monies, or the securities taken by you on account of these private or public monies?

Mr. Trotter.—None.

Mr. Whitbread.—Did lord Melville repay the money to you, with which 2,000*l.* East India stock in 1792 was purchased, or did that money form a part of the account current between you till the final close of that account in the year 1800?—The East India stock bought being 2,000*l.* and the purchase money 4,000*l.*?

Mr. Trotter.—I placed that sum to the debit of lord Melville's account current, and I believe every man of business must know that when payments are made upon that account current, it is impossible to say what particular sum was so paid.

Mr. Whitbread.—Was there any specific sum of money, appropriated by lord Melville, to the discharge of that specific sum?

Mr. Trotter.—I do not recollect any.

Mr. Whitbread.—If all the money had been placed according to the directions of the 25th of the king, and such an improbable event had taken place, as the failure of the Bank, should you have considered yourself responsible for the money so left in the Bank of England, according to the act of parliament?

Mr. Trotter.—I should not.

Mr. Whitbread.—And, if Messieurs Coutts should have become insolvent, should you have considered yourself as responsible, for the sum lost by that failure?

Mr. Trotter.—I confess I should; though I looked upon the circumstance impossible.

Mr. Whitbread.—Supposing such a very improbable event, as the failure of Coutts's house, had taken place, had you, at that time, any fortune of your own, by which you might have made good such a sum?

Mr. Trotter.—That depends entirely upon the balance that was in Mr. Coutts's hand at that time.



Mr. *Whitbread*.—Supposing the balance had amounted to 50,000*l.* had you any probability, in such a case, of repaying it?

Mr. *Trotter*.—Until very late years, I do not think that I had a fortune that could have made good that loss; of late years I could have made good that loss, as my fortune exceeds it, by perhaps, ten or fifteen thousand pounds, and no more.

Mr. *Whitbread*.—When you came into the Navy-pay-office, what was your private fortune, exclusive of your salary?

Mr. *Plumer*.—My lords, this is going into entirely new matter.

Mr. *Whitbread*.—I have not asked the witness a single question, that has not been formed from a note, taken from the mouth of the learned counsel, in the cross-examination of yesterday; but I submit I have a right, if I thought proper, to go into new matter also: I can refer, if it is necessary, to the words of the learned counsel. The learned counsel cross-examined very much as to the security of the public cash, in the situation in which the witness described he had placed it; he cross examined him indeed, as to the *increased* security of the public cash; then surely when I am asking as to the probable means of repayment, in case the public cash had been lost, I ask a relevant question.

Mr. *Plumer*.—I waive the objection.

Mr. *Whitbread*.—I am glad of it for the sake of the learned counsel. What was your fortune, independent of your salary, at the time of your appointment to the office of paymaster to the treasurer of the Navy?

Mr. *Trotter*.—I do not recollect accurately; but certainly not great, not perhaps, exceeding one or two thousand pounds.

Mr. *Whitbread*.—Have you had any great accumulation of fortune, by any event, independent of your situation as paymaster of the Navy?

Mr. *Trotter*.—I have had considerable acquisitions by inheritance.

Mr. *Whitbread*.—To what amount?

Mr. *Trotter*.—I was going to explain; it was considerable in proportion to my fortune, although it may not be so in the eyes of many people. I suppose, somewhere between six and seven thousand pounds.

Mr. *Whitbread*.—Is that the extent of your accumulation of fortune, independent of what you derived in one way or other from the Navy-pay-office?

Mr. *Trotter*.—I also had an acquisition of fortune, small I must confess, by marriage.

Mr. *Whitbread*.—To what amount?

Mr. *Trotter*.—I suppose about three thousand pounds.

Mr. *Whitbread*.—When did this acquisition by your marriage take place?

Mr. *Trotter*.—Part of it upon my marriage, in the year 1797.

Mr. *Whitbread*.—When did the other acquisitions take place, or the largest quantity of them?

Mr. *Trotter*.—At the death of my brothers, which was about—I am totally unfit to answer the question, from not being able to make up my mind as to the distance of time; it might be eight or ten years ago.

Mr. *Whitbread*.—What might your acquisition be upon that occasion?

Mr. *Trotter*.—I inherited, by one, the sum of five thousand pounds.

Mr. *Whitbread*.—How much by the other?

Mr. *Trotter*.—I cannot tell how much, because it came into my hands at different times.

Mr. *Whitbread*.—Was it as much as 5,000*l.*?

Mr. *Trotter*.—It was not.

Mr. *Whitbread*.—Was it as much as 3,000*l.*?

Mr. *Trotter*.—It may be; but I do not know.

Mr. *Whitbread*.—Are you in possession of any landed property?

Mr. *Trotter*.—I am.

Mr. *Whitbread*.—Is lord Melville acquainted with that fact?

Mr. *Trotter*.—I believe he is.

Mr. *Whitbread*.—Was he acquainted with that fact, at the time the acquisition of landed property took place, or thereabouts?

Mr. *Trotter*.—I purchased my land at four or five different times: I do not know that his lordship was acquainted with each purchase.

Mr. *Whitbread*.—Was lord Melville generally acquainted that you had become a man of landed property in Scotland?

Mr. *Trotter*.—I presume he was; for although it is not a great purchase, yet it is not so insignificant as to have escaped his lordship's notice.

Mr. *Whitbread*.—It is an unpleasant question, but I am led to it by the cross examination of the learned counsel, or I should have abstained from it.—What do you conceive to be the amount of your property at this moment?

Mr. *Trotter*.—I had occasion, about a year ago, to make up a statement of my property, and, at that time, I valued it at what I considered to be a very fair valuation, at about 51,000*l.* or 52,000*l.* but it was so invested, as not to produce me an income of more than 1,200*l.* per annum.

Mr. *Whitbread*.—Has the salary of the paymaster of the Navy been increased considerably since you were originally appointed to it?

Mr. *Trotter*.—It has.

Mr. *Whitbread*.—To what amount?

Mr. *Trotter*.—To the sum of eight hundred pounds per annum.

Mr. *Whitbread*.—Did that increase take place before lord Melville left the office, in the year 1800?

Mr. *Trotter*.—It took place at that very time, I believe.

Mr. *Whitbread*.—Did it take place at the time, or immediately after lord Melville left the office?

Mr. *Trotter*.—I do not know whether the first payment of my salary commenced before or after.



Mr. Whitbread.—Did it take place before the first of January 1800?

Mr. Trotter.—I believe not.

Mr. Whitbread.—Whether drafts upon the Bank of England are, in your estimation, effects as valuable as drafts upon the house of Mr. Coutts?

Mr. Trotter.—It depends upon who makes the drafts, I take it.

Mr. Whitbread.—Supposing always that the person who makes those drafts upon the one or the other has effects in the hands of that one or other person, and that he does not exceed in drawing the sum for which he has credit; supposing you have 10,000*l.* in the Bank, and 10,000*l.* in the hands of Mr. Coutts, and you were to give a draft to one person for 5,000*l.* on the Bank, and to another for 5,000*l.* on Mr. Coutts, should you think your draft on the Bank would be answered as readily as the draft on Mr. Coutts?

Mr. Trotter.—I should certainly consider it of equal value.

Mr. Whitbread.—You have stated, in answer to a question upon the cross-examination of the learned counsel, that the Navy-pay-office had been removed during your paymastership from Broad-street, in the vicinity of the Bank, to Somerset-place, which is at a greater distance from the Bank. What were the usual official hours while you were paymaster, according to the common routine of business, when business began in the morning, and when it ceased in the afternoon?

Mr. Trotter.—From ten till four o'clock were the hours of attendance, but the payments I believe stopped sooner.

Mr. Whitbread.—At what hour did the payments stop?

Mr. Trotter.—I believe generally at two; but as I was not in the habit of making payments myself, I speak from the general habit of the office.

Mr. Whitbread.—Do you know at what hour of the day payments cease at the Bank of England?

Mr. Trotter.—I do not know.

Mr. Whitbread.—That is easily ascertained; it is at five o'clock. Did you confine your use of the public money to such sums only as were wanted for official convenience?

Mr. Trotter. I do not comprehend the question.

Mr. Whitbread.—You stated upon your cross-examination, that the average balance of the assigned and unclaimed money was about 143,000*l.*; did you confine yourself at all times to the use of the sum of 143,000*l.* only?

Mr. Trotter.—I did not; that is to say, I had greater sums out of the Bank, and in Mr. Coutts's hands, and elsewhere.

Mr. Whitbread.—When these sums were so out from the Bank, did you always take care to have the larger part of them in the hands of Mr. Coutts, for the purpose of answering official demands?

Mr. Trotter.—I have stated that the whole of it, as far as I can recollect, passed through Mr. Coutts's hands; but I do not mean to say that it remained in Mr. Coutts's hands till the payment was required.

Mr. Whitbread. Did you confine yourself to the sum assigned always, in drawing upon the Bank for your own private use?

Mr. Trotter. I did not.

Mr. Whitbread. Did you ever take any pains to inquire into the average amount of these unassigned claims, before your calculation with Mr. Canning?

Mr. Trotter.—I cannot say I ever did.

Mr. Whitbread.—When did that operation, of the calculation between you and Mr. Canning, then take place, or whereabouts?

Mr. Trotter.—About March last year, I presume.

Mr. Whitbread.—On what account was that calculation made?

Mr. Trotter.—From the subject having become a matter of consideration with Mr. Canning.

Mr. Whitbread.—Was it a matter of consideration with you also, at that time?

Mr. Trotter.—I did it more to assist him in his views, than having any myself.

Mr. Whitbread.—Did you always consider the state of your account at Mr. Coutts's when you drew out money for your own purposes?

Mr. Trotter.—I cannot say that I did; I rather considered the balance that was in the Bank, and conceiving it to be larger than would probably be demanded at an earlier period, I withdrew some part of it, and put it into the hands of Messieurs Coutts.

Mr. Whitbread.—Has your account at Messieurs Coutts' ever been, at an average, below the unassigned part?

Mr. Trotter.—Very often, I have overdrawn Mr. Coutts's house.

Mr. Whitbread.—Have you ever overdrawn that account?

Mr. Trotter.—I have.

Mr. Whitbread.—Did you ever give a draft on the house of Coutts in favour of sub-accountants, for a smaller sum than you have given upon the Bank of England for the same sub-accountants?

Mr. Trotter.—I do not recollect that I ever did; but, in the multiplicity of payments that appear on those accounts, I hope I shall not be urged to make specific answers, to such specific questions.

Mr. Whitbread.—Did you ever in your official situation give a piece of paper of any description, a draft upon any body, or any house, purporting to be a draft for a fractional payment below one pound?

Mr. Trotter.—I do not recollect that ever I did.

Mr. Whitbread.—Did you ever issue so low a sum in a draft, to any of your sub-accountants, as ten pounds?

Mr. Trotter.—In arranging balances in account with the sub-accountants I may have



done so; but I do not recollect the circumstance.

Mr. *Whitbread*.—Did you ever issue to any of your sub-accountants a draft of so low a sum as ten pounds, for the purpose of its being immediately paid, one of the payees having an immediate claim upon that fund?

Mr. *Trotter*.—I do not recollect having done so.

Mr. *Whitbread*.—Did you ever make payments to the payees of the navy and victualing bills, except through your sub-accountants?

Mr. *Trotter*.—I do not think I ever did.

Mr. *Whitbread*.—Did you, when paymaster of the navy, make your issues daily to the sub-accountants?

Mr. *Trotter*.—I generally did.

Mr. *Whitbread*.—At what time in the morning did you usually take your seat in the office?

Mr. *Trotter*.—I believe I was pretty punctual in my attendance at the office, at the office hours, at ten o'clock.

Mr. *Whitbread*.—Did the sub-accountants upon your taking your seat, come with the balances regularly to you in the course of the office, with signed lists coming from the Navy-board for each day?

Mr. *Trotter*.—They generally did so, but not uniformly.

Mr. *Whitbread*.—Was it their ordinary routine of duty so to do?

Mr. *Trotter*.—It was.

Mr. *Whitbread*.—Was it the practice of the paymaster at that time, to issue to the sub-accountants drafts, for the whole of the money, which might be claimed under the assignment and list which was so sent from the Navy-office?

Mr. *Trotter*.—I generally issued the full sum, unless I found that the cashier had a balance in his hand, by which he could assist that payment.

Mr. *Whitbread*.—Did you learn from the practice of the office, what was likely to be the demand upon the assignments which might be claimed, and a list of which was presented to you, and regulate your practice accordingly?

Mr. *Trotter*.—I did.

Mr. *Whitbread*.—Did you continue in your office, liable to be called upon by any sub-accountant to whom you had not issued a sufficient sum in the morning, till the hour at which the payments ceased in the Navy-pay-office?

Mr. *Trotter*.—I either remained myself, or left some person authorized to carry on that part of my duty.

Mr. *Whitbread*.—Did you after Mr. Bathurst had directed the removal of money from Coutts to the Bank, continue to regulate your practice and mode of payment by the same practice?

Mr. *Trotter*.—It does not strike me that there was any considerable deviation, excepting granting a fuller sum in the morning than

perhaps I should have done if the account had remained at Mr. Coutts', where I could have recourse to a second supply more easily.

Mr. *Whitbread*.—Could you not have had recourse to a second supply by drawing upon the Bank, as much as if the money had been at Mr. Coutts'?

Mr. *Trotter*.—I could not.

Mr. *Whitbread*.—For what reason?

Mr. *Trotter*.—From the distance between the Bank and the Pay-office?

Mr. *Whitbread*.—Did any interruption or hindrance take place to the business of the office after the money was carried back from Messieurs Coutts' to the Bank?

Mr. *Trotter*.—I foresaw that a hindrance might occur, and I took care to obviate it, by granting the balances fuller than I might have done, had it remained at Mr. Coutts'.

Mr. *Whitbread*.—Was any payee ever delayed for a moment by the money being at the Bank?

Mr. *Trotter*.—I do not recollect any instance of it.

Mr. *Whitbread*.—After the money was restored to the Bank by the direction of Mr. Bathurst, were the drafts upon the Bank drawn by you in the same form during Mr. Bathurst's treasurership, were the drafts upon the Bank, precisely in the same form as those drafts had been, by which you drew money out of the Bank of England, and placed it at Mr. Coutts'?

Mr. *Trotter*.—I believe they were.

Mr. *Whitbread*.—Now with regard to the 7,000*l.* 3 per cent reduced stock, you stated that you had received a sum of 4,000*l.* on account of lord Melville, and to his credit, which you thought proper without directions from lord Melville, to invest in stock, for lord Melville's interest; at the time you received that 4,000*l.* on lord Melville's account, with which you purchased 7,000*l.* 3 per cent reduced annuities, for lord Melville's benefit, what was the state of lord Melville's Chest account? on which side was the balance?

Mr. *Trotter*.—I do not recollect that I ever specified that I had received a sum of 4,000*l.* under such circumstances.

Mr. *Whitbread*.—You stated yesterday upon your cross-examination that when you purchased 7,000*l.* 3 per cent reduced annuities for lord Melville's benefit; that that was an occasion upon which you received 4,000*l.* upon lord Melville's account, either from Scotland or elsewhere: now I want to know whether, at the time you so took upon yourself to purchase stock for lord Melville's benefit, the Chest account in the first instance was, or was not in favour of lord Melville?

Mr. *Trotter*.—Would your lordships wish me to answer that question, before I have ascertained whether I made that answer?

The following extract from the witnesses evidence on the preceding day, was read.

Q.—“ You stated, I think, that you



directed stock to the amount of 7,000*l.* three per cents to be purchased for lord Melville; was that purchase made by any directions from lord Melville?

A.—“It was made without any directions from his lordship.

Q.—“How came that purchase to be made, without any directions from lord Melville?

A.—“I made it in the general management of lord Melville's affairs; I believe a sum of money had come into my hands, at that time, for his lordship, and I thought it was proper to invest it in some manner, to produce an interest to his lordship.

Q.—“Am I to understand, that funds had come into your hands, which, before that time had been carrying a productive interest to lord Melville?

A.—“I believe they had, either previously, or a few days afterwards; one of the payments was, I think upon a bill, which might not have been due upon the very day I made the purchase; but I believe the bill had come into my hands, previous to my making the purchase.”\*

Mr. Whitbread.—At the time these valuable effects of lord Melville came into your hands, in what state did the two accounts, between yourself and lord Melville stand? and I would wish first to point your attention to the Chest account, which you, in every instance, have stated to be against lord Melville?

Mr. Trotter.—I hope your lordships will excuse me, in reverting to what I said before, that I do not find that the sum of 4,000*l.* was specified.

Mr. Whitbread.—Was it not a 4,000*l.* from Mr. Cameron?

Mr. Trotter.—I do not recollect the circumstance.

Lord Chancellor.—The short-hand writer, will read that part of the evidence.

Mr. Whitbread.—I will not perplex the Court, by specifying the sum. When any sum of money, which you designated in the way you did yesterday, came into your hands, with which sum, unspecified as to the amount, a certain quantity of stock was purchased; was lord Melville's Chest account, in his favour or against him?

Mr. Trotter.—I believe the balance of the Chest account, at that time, stood against his lordship.

Mr. Whitbread.—Did the account current, generally or usually, or for the most part, during the time it was open, stand against lord Melville?

Mr. Trotter.—It did; but I do not know, whether it did at that time or not.

Mr. Whitbread.—You stated yourself, yesterday, to have been at times, holder of navy bills during the time you were paymaster of

the navy; I am now referring to the security of the public money in your hands; were you, at any time, during the time you were paymaster of the navy, a holder of a certain quantity of navy bills?

Mr. Trotter.—I have held navy bills, during the time I was paymaster.

Mr. Whitbread.—Do you recollect that you were holder of a certain quantity of navy bills, at the time when they fell to a discount?

Mr. Trotter.—I believe I held navy bills, at a time, when they came to a discount.

Mr. Whitbread.—Did you borrow a sum of money, for the purpose of making official payments, at the time that navy bills were so at a discount, that you might keep those bills unsold?

Mr. Trotter.—As I conceived it to be immaterial, whether I paid the public drafts, by money taken out of one pocket, or taken out of another; I certainly borrowed money at the time that I found I could not sell my navy bills without a loss.

Mr. Whitbread.—Did that fact take place, that you made that loan?

Mr. Trotter.—I have reason to believe it did; although I do not distinctly recollect it.

Mr. Whitbread.—Had the sub-accountants of the Navy-pay-office accounts at Messieurs Coutts' at the same time, that you had your account, as paymaster of the navy?

Mr. Trotter.—They had.

Mr. Whitbread.—Was it with your approbation, that they had such accounts?

Mr. Trotter.—It was.

Mr. Whitbread.—Was it also by your recommendation, that they had those accounts?

Mr. Trotter.—I believe in most instances it was.

Mr. Whitbread.—Was it by your direction, or solicitation, that they had those accounts?

Mr. Trotter.—I beg to make a distinction between direction and solicitation.

Mr. Whitbread.—By your solicitation?

Mr. Trotter.—I very probably might solicit it, but not in very humble terms; I mean to say, that I did not insist upon it.

Mr. Whitbread.—Did any one of them express a reluctance to transferring his account, or any part of it, from the Bank of England to the house of Messieurs Coutts?

Mr. Trotter.—I do not recollect that they did. Mr. George Swatfield has told me that he did; but I do not recollect it.

Mr. Whitbread.—You stated yesterday, upon the cross-examination by the learned counsel, that when the million of money was placed in the hands of Messieurs Coutts, that it was for the purpose of accommodating the payees at the west end of the town: when the million was placed at Mr. Coutts' for that purpose, were the payments made by your own drafts on Mr. Coutts to each individual payee, or did you issue drafts to the sub-accountants, as usual, and the payees resort to them as usual for payment?

Mr. Trotter.—I stated that as one of the



objects that I had in view, but I carried on the payments in the same manner; I transferred a sum of, I think 400,000*l.* in a few days to one accountant, and 400,000*l.* to another, to their accounts at Mr. Coutts', and they paid the payees of the bills by their own drafts, upon their own accounts, at Mr. Coutts'.

Mr. Whitbread.—Was there any difference as to those specific sums, or was it not carried on in the same manner as the other accounts between you and the sub-accountants?

Mr. Trotter.—I do not know any other difference, except in the great hurry which took place, which always rendered more arrangement necessary.

Mr. Whitbread.—Did that arrangement go to supersede the ordinary routine of the office with the sub-accountants.

Mr. Trotter.—It did not; and I do not know that the ordinary routine was interrupted at that time.

Mr. Whitbread.—When Mr. Bathurst gave directions to you, as paymaster, to remove the cash from Mr. Coutts' to the Bank, did you remonstrate upon that subject?

Mr. Trotter.—I never made any objection to Mr. Bathurst's orders; but I certainly took the liberty to argue upon the subject.

Mr. Whitbread.—Did your arguments prevail with Mr. Bathurst?

Mr. Trotter.—They did not.

Mr. Whitbread.—Had you ever any discussion of the same sort with lord Melville as that which you had with Mr. Bathurst?

Mr. Trotter.—I do not recollect ever having had any such discussion.

Mr. Whitbread.—Having been asked in your examination in chief, as to the names in your accounts of Henry Dundas, Mr. Dundas, and the right honourable Henry Dundas, whether they all applied to the same person, and being cross-examined by the learned counsel on the other side, as to a certain specific sum of 1764*l.* you stated that that sum was transferred from one of your accounts to the other, and that it was entered twice; when you spoke to a sum paid to Henry Dundas of 1764*l.* 18*s.* 10*d.* and mention a transfer of that sum from one account to another, and call it a double entry, do you mean that the figures were entered twice over in two accounts, or that Henry Dundas was debited for twice the amount of the sum for which he was debtor?

Mr. Trotter.—I do mean to state, that I believe he was debited once in each of the accounts.

Mr. Whitbread.—Do you mean that he was charged 1,764*l.* more by you than he ought to have been charged?

Mr. Trotter.—I find, from looking into Mr. Coutts' books, the sum mentioned by the honourable manager charged in my general account with Mr. Coutts in two different sums, one of 1,000*l.* the other making up the odd sum of 1,764*l.* and I find, in what I called the separate account, a sum charged to Mr. Dun-

das; I find that carried to the credit of the other account, by which I rectified the debit which was wrong made in the first account.

Mr. Whitbread.—Do you mean, that you are now debtor in 1,764*l.* to lord Melville more than you thought you were when you signed the release?

Mr. Trotter.—I do not mean to say so; I mean to explain, that I debited lord Melville to a sum of 1,000*l.* and to a second sum of 700*l.* and odd. I drew a draft, payable to his lordship, for those two sums, upon my account, at Mr. Coutts', which I call my own account. I afterwards wished to make that debit appear in the separate account only; for which purpose I drew another draft, payable to Mr. Dundas, for 1,700*l.* and odd, to rectify the mistake I had made in the first account, as no sum appears to the credit of the first account under his name.

Mr. Whitbread.—Then, notwithstanding this double entry, the accounts were, such as you presented them, right and correct, at last?

Mr. Trotter.—The accounts were so; but I apprehended the question led to know, whether all the sums that were charged, or appeared to be charged to Mr. Dundas, actually went to his credit.

Mr. Whitbread.—But were the accounts, at last, correct and right?

Mr. Trotter.—They are correct in substance, although there appears a greater sum issued to Mr. Dundas than was issued to him.

Mr. Whitbread.—Are they correct in substance?

Mr. Trotter.—They are; I believe all my accounts are so.

Mr. Whitbread.—When a draft was drawn upon the house of Mr. Coutts, the produce of which was to be paid into the public cash at the Bank, was not there always a distinguishing mark, such as A. P. Act of Parliament account, or some other, by which you could distinguish, when referring to your accounts, that such draft was made for a public purpose?

Mr. Trotter.—I do not know of any such mark.

Mr. Whitbread.—You were cross-examined by the learned counsel yesterday, as to a particular mark on one of your drafts of A. P. or something of that sort?

Mr. Trotter.—One of the accounts of the treasurer of the navy is designated, "Act of Parliament Account;" and when I drew a check payable upon that account, I would say, payable to Act of Parliament Account. But it does not follow, that I applied it to a payment, on account of the Act of Parliament Account, though I gave it that name.

Mr. Whitbread.—Was that money, so drawn by you, from Mr. Dundas's Act of Parliament Account, specified upon it, money which you meant to apply to your own private emolument?

Mr. Trotter.—I did not. Every particular



sum that is drawn there, is attended with particular circumstances, and I can give no general answer to that general question.

Mr. *Whitbread*.—The learned counsel yesterday cross-examined as to the accounts being kept up by the ex-treasurer of the navy, and so forth—whether you know that there was, during the treasurership of lord Melville, an Accountant's branch established in the Navy-pay-office?

Mr. *Trotter*.—I do.

Mr. *Whitbread*.—Was that done during the treasurership of lord Melville?

Mr. *Trotter*.—It was.

Mr. *Whitbread*.—Did that branch continue its functions uninterrupted from the moment of its appointment?

Mr. *Trotter*.—I believe it did, until it was found necessary to remove a great number of clerks, belonging to that branch, to a different branch of the office, to carry on the current business of the office, which was greatly augmented when the war began.

Mr. *Whitbread*.—When did the interruption to this branch of the accountant's business take place?

Mr. *Trotter*.—Many years ago; but I cannot recollect the precise time.

Mr. *Whitbread*.—Do you recollect how long it went on in the due execution of its office?

Mr. *Trotter*.—I do not precisely recollect, but I suppose several years.

Mr. *Whitbread*.—Do you recollect when it was first discontinued?

Mr. *Trotter*.—It has been discontinued many years; but there was an absolute necessity for discontinuing it; it was done after several consultations and conversation with the navy board; and was not a suggestion of mine or of the treasurer.

Mr. *Whitbread*.—Was it first discontinued on account of any suggestion to the navy board, or in consequence of any conversations with the officers of that board?

Mr. *Trotter*.—As far as I recollect the circumstance, it was discontinued from the navy board withdrawing several of their clerks, who were necessarily employed in the same business, and when they were withdrawn, it became necessary for the treasurer also to withdraw his, as they were proceeding on a business that required their joint attendance.

Mr. *Whitbread*.—Was the increase of business in the Pay office the reason why those clerks were withdrawn, or was it because the business of the navy board was not able to keep pace with the business of the Navy-pay-office?

Mr. *Trotter*.—They both occurred at the same time, because it was to send clerks down to the out-ports, which it was necessary to send from both offices. I found it necessary at last to direct the accountant to take upon himself a duty out of town, as he could not be employed, I thought, with equal advantage upon the treasurer's accounts in town.

Mr. *Whitbread*.—Did there, to your know-

ledge, exist in the Bank of England, at the time lord Melville quitted the Navy-pay-office, a balance upon his lordship's first ex-treasurership account?

Mr. *Trotter*.—Yes, I believe so—I know so.

Mr. *Whitbread*.—Do you recollect whereabouts the amount of that balance was?

Mr. *Trotter*.—The account was nearly closed, and, as far as I recollect, the balance exceeded 5,000*l.* by a few hundreds.

Mr. *Whitbread*.—Do you know what became of that balance, upon lord Melville's quitting the office?

Mr. *Trotter*.—I believe lord Melville drew out that balance.

Mr. *Whitbread*.—What did he do with it, when he had drawn it out?

Mr. *Trotter*.—He paid it to me; it was a balance upon the ex-treasurership, and as I understood at that time, all the ex-treasurers had a right to withdraw the money from the Bank, or to do with it as they pleased till the accounts were finally settled.

Mr. *Whitbread*.—Did lord Melville pay it to you?

Mr. *Trotter*.—He did.

Mr. *Whitbread*.—What did you do with it when lord Melville had paid it to you?

Mr. *Trotter*.—I first carried it to the credit of his account current, and then I paid it into the Bank.

Mr. *Whitbread*.—Into what account at the Bank did you pay it, after you had carried it through your account current?

Mr. *Trotter*.—I paid it into the Bank on account of balances which I had out of the Bank at that time upon the current account of the navy.

Mr. *Whitbread*.—You have stated, upon your cross-examination, with regard to the last balances that were paid by lord Melville, that there were balances due by lord Melville upon the account current. Were the balances actually due by lord Melville to you upon the account current, and the balance due upon the Chest account, paid to you by lord Melville?

Mr. *Trotter*.—I believe the whole of them were paid to me.

Mr. *Whitbread*.—Could you specify at all in what manner they were paid to you?

Mr. *Trotter*.—I have considered the subject very much lately, and from that consideration, I am enabled to speak.

Mr. *Whitbread*.—In what manner were those balances paid by lord Melville to you?

Mr. *Trotter*.—Having the power of selling the whole of his lordship's stocks, I directed them to be sold; and they accordingly were either sold, or else the price of the day was allowed me, and paid into the credit of my account at Mr. Coutts'. (They were paid into the credit, I believe, of lord Melville's account at Mr. Coutts'.) If I had documents to speak from, I could make an accurate statement. If the honourable manager, who is perfectly acquainted with the circumstance, will ask



me upon each individual sum, I shall perhaps be able to state.

Mr. *Whitbread*.—Do you recollect so far, as that a sum of 20,000*l.* was paid into your hands, on account of lord Melville, by Mr. *Sprot*?

Mr. *Trotter*.—It was paid either into my hands, or by Mr. *Sprot* into the credit of lord Melville's account at Mr. *Coutts*'.

Mr. *Whitbread*.—Was another sum of about 30,000*l.* paid into your hand, on account of lord Melville, by Mr. *Sprot*?

Mr. *Trotter*.—I do not think the honourable manager has stated it perfectly correct; that money was paid in to the credit of my account at Mr. *Coutts*', being the produce of the sale of East India stock, which I mentioned yesterday, by which a debt was paid off, which existed upon that stock, of 20,000*l.*; the surplus of it went to the credit of lord Melville's account current with me.

Mr. *Whitbread*.—What became of it after it passed through the account current with you?

Mr. *Trotter*.—I also paid that money into the Bank, in liquidation of balances I had out of the Bank.

Mr. *Whitbread*.—Did you receive, or do you know that lord Melville paid, an additional sum of 13,000*l.* in liquidation of balances at the Bank?

Mr. *Trotter*.—That sum formed part of a greater sum, which lord Melville paid me to pay into the Bank on his account; the other part of that sum has already been mentioned; it was 19,000*l.* of the 20,000*l.* or thereabout, which was mentioned before, that formed the whole of the sum, I think, that I received of lord Melville, to pay into the Bank.

Mr. *Whitbread*.—Am I to understand that you mean to state, that that part of the balance, which was made good by lord Melville, was made good in the following manner: 20,000*l.* or thereabouts, from *Sprot*; 30,000*l.* or thereabouts also from *Sprot*; of which 20,000*l.* went in liquidation of the debt due for the East India stock mentioned yesterday, and the balance paid into the Bank account, after having passed through your account current; and the sum of 13,000*l.* or thereabouts, which was advanced in some other way, added to which, is the ex-treasurer-ship account of 5,000*l.* and upwards?

Mr. *Trotter*.—I believe the honourable manager has stated them correctly, as far as I can follow him.

Mr. *Whitbread*.—The learned counsel cross-examined the witness yesterday, as to all the receipts of the witness on account of lord Melville, from various sources and remittances from Scotland and elsewhere. When you speak of the balances due by lord Melville upon his accounts, do you mean to say that before those balances were struck, all those remittances of every description were always carried to his credit? Did you, in fact, always give lord Melville credit for every

thing you received on his account when you summed up the account?

Mr. *Trotter*.—I gave lord Melville credit in one or other of his accounts for all the sums he paid into my hands.

Mr. *Whitbread*.—That came into your hands in any way.

Mr. *Trotter*.—I did, as far as I recollect.

Mr. *Whitbread*.—Do you know any one instance where you did not credit lord Melville, as an honest man ought to do, for the money you received on his account?

Mr. *Trotter*.—His lordship was most undoubtedly credited, but if a sum of money had been paid into my hands with directions to pay to himself again, those are the exceptions.

Mr. *Whitbread*.—Those sums you have last specified never came, I suppose, into the account at all?

Mr. *Trotter*.—If such a circumstance ever existed, but I do not recollect that it ever did.

Mr. *Whitbread*.—You stated yesterday about a loan from the house of Mansfield, Ramsay, and Company, that had been advanced to lord Melville, and a payment which was made by your direction, after having refreshed your memory by a written document in your own hand-writing, of the date at the time when it was made. Did you make such payment without any direction given by lord Melville at all?

Mr. *Trotter*.—I stated yesterday that I had lost all recollection of the transaction whatever, but I can certainly state that I could not have made it without lord Melville's directions.

Mr. *Whitbread*.—You have stated upon your cross-examination, that lord Melville never directed payments to be made out of the public monies specifically: when you received certain modes of direction, such as you have stated this morning, did not lord Melville in fact know that those payments were made, and meant they should, in fact, be made out of public money?

Mr. *Plumer*.—That is certainly a very leading question put by the honourable manager, and goes not only to what lord Melville directed to be done, but to what lord Melville meant to do.

Mr. *Whitbread*.—I wish to put my questions with the utmost correctness. The question asked by the learned counsel upon which I may found myself, I suppose was, whether upon that occasion, or upon any other, lord Melville ever directed you to lay out any part of the public money in your hands, for the use and benefit of lord Melville; to which he answers, he never did, under the specific name of public money, or any money bearing that description. I would generally ask, whether you ever received any directions in any way from lord Melville, which led you to know that lord Melville meant the public money; that lord Melville knew that it was public money which was to be so paid?



Mr. Trotter.—I cannot swear so.

Mr. Whitbread.—I ask as to the Chest account?

Mr. Trotter.—I certainly cannot swear so.

Mr. Whitbread.—Do you believe that lord Melville knew that to be public money?

Mr. Plumer.—Certainly that is not a proper question; the witness is to state facts, not opinions.

Mr. Whitbread.—Did you receive such directions from lord Melville as you have specified, which directions led you to debit lord Melville in the Chest account, and do you know that lord Melville meant those directions to be for public money?

Mr. Trotter.—I did not know it.

Mr. Whitbread.—Did you always use public money when such order was given?

Mr. Trotter.—I request the order to be more particularly described, before I can answer the question.

Mr. Whitbread.—That sort of order which you described in the early part of your examination to-day to be more in the nature of a requisition than a request, which induced you to debit him in the Chest account. Did you always consider such a request as an authority for using public money?

Mr. Trotter.—I have already said that I have placed them to the debit of that account.

Mr. Whitbread.—Did you in that case always debit it to the Chest account?

Mr. Trotter.—I have already stated that that was the distinction I made, and I always did it of course.

Mr. Whitbread.—Did lord Melville ever make any inquiry of you,—after the indignant refusal which he had given to the proposition made by you to him, to employ a certain sum of money in the purchase of East-India stock, upon which you were cross-examined yesterday,—Did lord Melville, when he either requested or required money to be advanced to him by you, ever ask you, in any one instance, whether your own private funds would supply that source?

Mr. Trotter.—I do not recollect that his lordship ever did; as to inquiring into the particular state of my own private funds, I do not think lord Melville ever did.

Mr. Whitbread.—Did he ever make any inquiry of you, whether in making such advances you were trenching upon the public balances?

Mr. Trotter.—He never did.

Mr. Whitbread.—You stated that the Chest account was regularly delivered to lord Melville?

Mr. Trotter.—It was at different periods, but not so frequently as I delivered the account current.

Mr. Whitbread.—Were any objections ever made by lord Melville upon your delivering the Chest account to him?

Mr. Trotter.—Lord Melville never examined my accounts, in my presence, so minutely as to enable him to make objections.

Mr. Whitbread.—Did he ever in fact object to them?

Mr. Trotter.—He never did.

Mr. Whitbread.—Do you know any instances in which lord Melville did not sign the Chest account after you, from time to time, had delivered that account to him?

Mr. Trotter.—I do not recollect any instance in which his lordship refused to sign the accounts.

Mr. Whitbread.—Were not the duplicates of the accounts presented by you to lord Melville, left with his lordship?

Mr. Trotter.—They were.

Mr. Whitbread.—Of both the Chest account and the account current?

Mr. Trotter.—They were.

Mr. Whitbread.—Is it not in evidence that the money with which the loyalty loan was purchased, was transferred from the current account to the Chest account?

Mr. Trotter.—The money which I advanced upon the loyalty loan was.

Mr. Whitbread.—There was some cross-examination as to the dividends of the East-India stock; was not the excess of the interest above the dividends charged to the debit of lord Melville's account?

Mr. Trotter.—Yes.

Mr. Whitbread.—Are you correct as nearly as you can recollect, in stating that the sum advanced for the purchase of the whole of that East-India stock, advanced at different times, was to the best of your recollection 23,000*l.* or thereabouts?

Mr. Trotter.—It was, to the best of my recollection.

Mr. Whitbread.—What is the interest at five per cent of 23,000*l.*?

Mr. Trotter.—1,150*l.*

Mr. Whitbread.—What was the dividend upon the India stock at the time those purchases were made? was it not eight per cent?

Mr. Trotter.—Eight per cent.

Mr. Whitbread.—Calculating upon 14,500*l.* India stock, what would the dividend at eight per cent amount to?

Mr. Trotter.—To the best of my recollection that stock was only 13,500*l.*

Mr. Whitbread.—Calculate upon a given sum of 14,500*l.* what would it be?

Mr. Trotter.—1,160*l.* I believe.

Mr. Whitbread.—Then supposing it was 14,500*l.* there was no excess of interest above the dividend at that time. Was not the dividend, during the time it was in the possession of lord Melville, advanced from eight per cent to ten and a half per cent?

Mr. Trotter.—It was advanced to ten and a half per cent, but that was several years afterwards.

Mr. Whitbread.—What would the dividend amount to annually upon 14,500*l.* India stock at ten guineas per cent?

Mr. Trotter.—I believe 1,522*l.* 10*s.*

Mr. Whitbread.—It was stated, upon your



cross-examination, with regard to the salary of lord Melville, that it had been brought to your recollection, that there were one or two instances in which you had not received the salary of lord Melville, but that Mr. Wilson had done so. When that salary was so received by Mr. Wilson, was it as agent to you, or as agent to lord Melville?

Mr. Trotter.—I believe he received it as agent to myself, as it was placed, I believe in most instances if not in all, to the credit of my account at Mr. Coutts' in the first instance, and afterwards transferred by me to the credit of lord Melville's account current with me.

Mr. Whitbread.—A good many questions were asked, upon cross-examination, with regard to a power of attorney given by lord Melville to sell and transfer stock and receive the dividends. I wish to know whether this power of attorney, for sale and transfer of stock and receipt of dividends, was in the usual and common form of such powers of attorney?

Mr. Trotter.—I know nothing to the contrary, but I do not know that I ever saw them; I fancy they were taken by my banker, but I do not know; I certainly never read them.

Mr. Whitbread.—Do you recollect, in any particular instance (and this arises upon the cross-examination with regard to the 2,000*l.* India stock), a desire expressed on the part of lord Melville, for the advance of money by you, to comply with any particular purpose, such as the purchase of 2,000*l.* East-India stock; at which time your account was so low at Messieurs Coutts', that you were obliged to withdraw from the Bank a specific sum to comply with that request?

Mr. Trotter.—Upon looking into Mr. Coutts' books, I find a circumstance of that sort may have occurred, but I do not recollect the circumstance myself; I cannot speak from my own recollection.

Mr. Whitbread.—As you were a good deal cross-examined too with regard to the state of the balances in and out of the Bank, can you, from any information upon which you can depend, or any recollection that you have, or in any way state to the Court, what the difference between the Bank account and the office account was at any time or times, while you were paymaster of the Navy under lord Melville?

Mr. Trotter.—I cannot state it from memory.

Mr. Whitbread.—Could you, by consulting any documents, swear to that fact?

Mr. Trotter.—I have got documents in the hands of the honourable managers, by which I think I can ascertain it.

Mr. Whitbread.—I wish those books and documents, to which the witness refers, to be put before him.

Lord Chancellor.—What are those documents by which, if you refer to them, you shall be able to give that answer?

Mr. Trotter.—They are books which I kept as checks upon the public accounts, but no part of the public accounts: I believe they are called balance books.

Mr. Whitbread.—Was this book, lying before you, and the others to which you have referred, kept by yourself when you were paymaster?

Mr. Trotter.—The greatest part does appear to be kept by myself.

Mr. Whitbread.—Is any part of that book in your own hand-writing?

Mr. Trotter.—It is.

Mr. Whitbread.—How long did you continue to write in those books with your own hand?

Mr. Trotter.—I cannot state that with any accuracy, but I have wrote very little in them for many years past, having been deprived of the use of my hand, from which I cannot write.

Mr. Whitbread.—When you ceased to be able to write yourself, who kept the books for you?

Mr. Trotter.—Principally Mr. Thomas Wilson, of the Pay office.

Mr. Whitbread.—Have you examined these books so written by Mr. Wilson?

Mr. Trotter.—I have bestowed upon them all the examination which I have thought necessary.

Mr. Whitbread.—From those books can you speak to the account?

Mr. Trotter.—It depends upon the questions that may be asked me from those books.

Mr. Whitbread.—I ask to a particular period, the 31st of August, 1786; what was the outstanding difference at that time in the Navy-pay-office?—Do you know what, on the 31st of August, 1786, was the difference between the office balance, or that with which the treasurer was charged, and the Bank balance?

Lord Chancellor.—Is that a public official book that lies before you?

Mr. Trotter.—No, it is my own private book, which I kept as a check upon the office.

Mr. Whitbread.—Can you speak from your own knowledge, whether on the 31st August, 1786, there was a difference of 56,000*l.* between the office balance and the Bank balance?

Mr. Trotter.—I cannot state it from this book, I must have also the concurrent testimony of books kept by the Bank.

Mr. Whitbread.—This book we can prove, by the Bank clerk that is here, to be one of the banking-books of lord Melville?

Mr. Trotter.—I can speak with more positive knowledge further on.

Mr. Whitbread.—I would ask as to the 31st of December, 1787.—Do you know that the difference at that time was 53,100*l.*?

Mr. Trotter.—I have already stated that I must have the concurrent testimony of the Bank books, and I wish to give a little explanation upon this account before I speak upon it, if I have your lordships' permission. The



treasurer's balance which was returned at the end of this month as well as all other months, consists of balances, in three different branches of the office; each of those branches are subdivided; part of the balance in each branch is in the hands of the treasurer and his paymaster, for the purpose of issuing further sums to the sub-accountant for the carrying on the public payments; and the other parts of it have already been issued to the sub-accountants, for the purpose of carrying on the public payments, that applies to that part which remains in the treasurer's hands, for the purpose I have described, of the three branches collectively.

Mr. *Whitbread*.—I ask to the aggregate of what ought to be in the hands of the sub-accountants and the treasurer, and then state what is the difference between that and the money in the Bank?

Mr. *Trotter*.—The honourable manager wishes me to state that part of the balance which the first clerk of each branch calculates, by finding out the balance of the sub-accountants, and what ought to be in the hands of the treasurer; that may be accurate or not accurate, as the balance he states to be in the hands of the treasurer may be accurate or not accurate, and the balance he states to be in the treasurer's hands may be stated without his knowing it to be so.

Mr. *Whitbread*.—State the difference between that which is neither in the sub-accountants hands, nor in the Bank, but in yours?

Mr. *Trotter*.—On the 31st of December 1787, if the sub-accountants were right in making up their balances, there was a difference of 53,100*l.* between the sum which the first clerk said ought to be in the treasurer's hands, and the sum which was in the Bank.

Mr. *Whitbread*.—Now refer to the 31st May 1788.

Mr. *Trotter*.—Will your lordships allow me to speak from this account in my hand, instead of the book?

Lord *Chancellor*.—What is that paper?

Mr. *Trotter*.—An account I have collected from an examination of the books, and the Bank books.

Mr. *Whitbread*.—Do you know that upon the 31st of May, 1788, there was a difference, in the way I stated before of, 61,600*l.*?

Mr. *Trotter*.—There appears to be such a difference.

Lord *Chancellor*.—Is that subject to the same explanation that you gave of the former entry?

Mr. *Trotter*.—It is.

Mr. *Whitbread*.—Refer to May the 31st 1790; was there not then a difference, subject to the same explanation, of 64,800*l.*?

Mr. *Trotter*.—The statement is accurate.

Mr. *Whitbread*.—Refer to the 31st March, 1792; was there not a balance of 102,388*l.* 9*s.* 3*d.*?

Mr. *Trotter*.—There appears to be that difference.

Mr. *Whitbread*.—Refer to the 31st October, 1793; was there not the sum then of 115,000*l.* difference, subject to the same explanations?

Mr. *Trotter*.—There appears to have been that difference existing at that time.

Mr. *Whitbread*.—Refer to the 30th of April 1794; was there not then a balance of 161,425*l.* 17*s.* 9*d.*?

Mr. *Trotter*.—That appears also to be correct.

Mr. *Whitbread*.—Refer to the 28th of February 1795; was there not a balance of 209,875*l.* 17*s.* 9*d.*, subject to the same explanation?

Mr. *Trotter*.—There was.

Mr. *Whitbread*.—Refer to the 30th of April 1795; was the balance then 310,325*l.* 17*s.* 7*d.*?

Mr. *Trotter*.—The account which I hold in my hand differs two-pence.

Mr. *Whitbread*.—I stated it wrong, it is 17*s.* 9*d.*?

Mr. *Trotter*.—That is right.

Mr. *Whitbread*.—Refer to the 31st of March 1796; was not the balance then 194,500*l.*?

Mr. *Trotter*.—That appears to be correct.

Mr. *Whitbread*.—On the 29th of February, of the same year, was it not 216,841*l.* 14*s.* 2*d.*?

Mr. *Trotter*.—That also appears to be correctly taken from these books.

Mr. *Whitbread*.—On the 30th of June 1797 was it not 281,759*l.* 5*s.* 5*d.*?

Mr. *Trotter*.—That appears to be correct.

Mr. *Whitbread*.—On the 30th of September 1798 was it 222,500*l.*?

Mr. *Trotter*.—That appears to be correctly taken.

Mr. *Whitbread*.—On the 30th of November 1799 was it 223*l.* os. 2½*d.*?

Mr. *Trotter*.—That appears to be correctly taken also.

Mr. *Whitbread*.—On the 30th of April 1800, the month preceding lord Melville's quitting the Navy-pay-office, was there not the sum of 344,500*l.*?

Mr. *Trotter*.—There appears to have been that difference between the books.

Mr. *Whitbread*.—I wish to recall your attention to the 30th of December 1790: was not the balance then struck, and no difference appeared?

Mr. *Trotter*.—The balance was struck, and no difference appeared; but some explanation may be necessary upon that.

Lord *Chancellor*.—Give that explanation.

Mr. *Trotter*.—That this balance may not actually have been paid up in the Bank books; I have taken into the balance the drafts I may have drawn upon the Bank, and which might not have been presented; I do not know whether there were any such, but if there were, they were taken into my balance.

Mr. *Whitbread*.—My lords, I can prove every balance monthly, from 1786 down to 1800, when lord Melville quitted the Navy-pay-office; but it appears to us to be an unnecessary wasting of your lordships' time so to



do, and we could prove larger differences even than those that have been stated, but as there might be some difficulty in referring to a part of them, the commons have thought it sufficient to take this mode of stating it to your lordships. There is a fractional difference with regard to one large balance of 490,000*l.* in one year, and I have not proved that, because it might be necessary to bring two drafts into court, for the purpose of showing that they were or were not presented, which might reduce the balance 10,000*l.* But the commons have not thought it worth while to call your lordships' attention to such a circumstance, having substantially proved the fact. I hope I have not forgotten any thing on the part of the commons; I should be extremely sorry if I had, but I cannot charge my memory at present with any other question which it would be material for the commons to ask. I am pretty sure that I have not asked a single question that has not its foundation in the cross-examination of the learned counsel; if I have, he will have the goodness to point out what it is?

Mr. Plumer.—According to my observation of the examination of this morning, a great deal of new matter has been introduced by the honourable manager, to which by the course of proceeding I should be entitled to put questions upon cross examination; but the course of examination pursued this morning appears to me to have left the matter so much as it stood yesterday, that I shall not avail myself of the right of putting questions upon that new matter, excepting one, which I wish to ask merely for the purpose of explanation.—The honourable manager has asked to-day respecting money that was drawn by the noble defendant, by requisitions, which were immediately carried to the Chest account.

Mr. Whitbread.—I beg, before that question is asked, to refer the learned counsel to the part of his cross-examination, upon which I founded that specific question. The foundation of that re-examination of mine is in a question and answer which I read before to your lordships; but having asserted the right of the commons to refuse the cross-examination of the counsel, the commons relinquish their right at this time, in order that there may not appear the least wish on their part to keep back any thing that the learned counsel can get out of the witness, in favour of lord Melville.

Mr. Plumer.—Whether any part of the sums, stated to be drawn and carried to the Chest account of lord Melville, was in the whole or in part applied to the use of lord Melville, or he had any benefit or emolument from them?

Mr. Trotter.—I am totally ignorant of the application of them, excepting in the case of 40,000*l.* which had been advanced to Boyd and Benfield, and which I only learned from what has passed in public.

Mr. Plumer.—Is that 40,000*l.* comprehended

within the head just mentioned, of money drawn by requisitions, and carried immediately to the Chest account?

Mr. Trotter.—It was, and may serve to show the nature of the requisitions that were made, from that sum of money having been made more the subject of public discussion than any of the other sums which have been advanced to his lordship.

Mr. Plumer.—Whether any part of the sums that you employed to purchase stock, or in any other way, for the benefit of lord Melville, stood in the same predicament of being immediately carried to the Chest account?

Mr. Trotter.—Not any of them.

Mr. Plumer.—I think you have stated, that a book of yours, which you referred to, a private book of yours, was in the possession of the managers; how long has that private book been in the possession of the managers?

Mr. Trotter.—Ever since the day upon which I had the misfortune to meet with the displeasure of the other House; I do not recollect the date.

Mr. Whitbread.—It was on the sixth of March, that the committee thought proper to call for the interposition of the House.

Lord Chancellor.—Has the counsel any other question to propose?

Mr. Plumer.—Several others; but I shall not give your lordships any more trouble.

Mr. Whitbread.—Have you any knowledge, with the exception of the knowledge you have subsequently gained, with regard to the application of the 40,000*l.*; do you know any thing of the application of other sums?

Mr. Trotter.—I have no knowledge whatever of the application of them.

Mr. Whitbread.—Are we correct in supposing, that the loyalty loan money, was transferred from the account current to the Chest account?

Mr. Trotter.—It was.

Mr. Whitbread.—Whether lord Melville was not credited for the dividends, upon the loyalty loan, up to the period at which that loan was sold?

Mr. Trotter.—I believe he was.

A Lord.—Having stated that lord Melville, from time to time, signed those accounts, which you delivered to his lordship; did you compare, upon those occasions, the accounts you so signed with the vouchers?

Mr. Trotter.—I do not recollect his ever comparing them, whilst I remained with his lordship.

A Lord.—Were those accounts, you have been speaking of, generally signed by lord Melville, immediately that they were presented by you, or did his lordship take the accounts home with him for consideration?

Mr. Trotter.—They were signed before I parted with him.

A Lord.—You stated that no item in these accounts had been ever objected to by the noble lord. Was it the habit of the noble



lord to enter into any discussion with you, upon the several items of the accounts?

Mr. Trotter.—The items of those accounts were so numerous, that I have no doubt, but his lordship may have made observations upon some particular instances; but I do not recollect them.

A Lord.—Do you consider the accounts having been so signed by lord Melville, as a proof of his lordship's approbation of the accounts, and the particular items therein contained, or as a proof of his lordship's confidence in you?

Mr. Trotter.—It certainly was, in the first instance, a proof of his lordship's confidence in me; as he must have known that I was subject to alter the accounts, in case he should have pointed out any error in them in future; but the public business, in which his lordship was generally engaged, seldom or never afforded him time to enter into any examination of the accounts, during the time that I remained with him, after having presented them to his lordship.

A Lord.—During the time that you were paymaster to lord Melville, did any, and what circumstances of delay or embarrassment to the public business arise in that office, so as to induce his lordship to doubt the correctness of your administration, and so as to engage him to a greater attention to those accounts, or to suggest to his lordship's mind that a more attentive investigation into the conduct of this office was necessary, than had been given by his lordship?

Mr. Trotter.—I know of none; but as I may be supposed to speak with partiality, with regard to my own conduct in the office, I should wish that question to be asked of any individual that was conversant with the business of the Pay-office.

A Lord.—At what time did you make the representation you have stated to lord Melville, to induce him to consent to your placing part of the public money in the Bank, in the hands of Messieurs Coutts and Company?

Mr. Trotter.—I believe soon after the removal of the business of the Pay-office to Somerset-house, from Broad-street, in the city.

A Lord.—Do you recollect what time that was?

Mr. Trotter.—I believe in the year 1786 or 1787.

A Lord.—You having stated, that the object you represented to lord Melville to be the reason why you wished to have permission to take the money from the Bank, and place it in the hands of Messieurs Coutts, was for more convenience and greater safety.—How could you conceive that there was any greater danger either to the treasurer of the navy or yourself, as paymaster, in the money remaining in the Bank, than in the hands of Messieurs Coutts?

Mr. Trotter.—I beg to answer, that it was necessary to carry on the business of the Pay-

office to send in drafts for very large sums, say 20,000*l.* or 30,000*l.* into the Bank daily; that we had no clerks or confidential people we could spare for that business, but were obliged frequently to send the messengers of the office, and it may appear to your lordships that it was a necessary precaution to fall upon some mode by which we could send a messenger for money to carry on those small payments, through a part of the town which was not so crowded, and not liable to so many accidents as in the great distance from the Pay-office to the Bank.

Then the following questions put to the witness on Monday the 5th instant, and his answers thereto were read:

Q.—“From the moment the list is received of the bills assigned, I understand you to say, that the treasurer must be ready to satisfy them when called for?”

A.—“He certainly may be called upon—I beg to explain that, I have said, there never has been any delay of a payment of a navy or victualling bill; but there is another description which are not called navy or victualling bills, which I did not advert to at that time. All navy or victualling bills are drawn assignable out of a certain sum of money received at the Exchequer; as long as that fund lasts, the bills are drawn from that fund; but there is another description of bills, not to a great amount, which are drawn upon the general fund of wages, without specifying any particular sum; and when the fund, under the head of wages, has been low, the navy board have thought proper to desire the treasurer to cease making payments of those bills, until a supply, under the head of wages, should be received from the Treasury.”

Q.—“Does that delay in any respect proceed from any act either of the treasurer or his paymaster?”

A.—“Not in any degree whatever.”

A Lord.—Explain that last answer; how it is that that does not depend either upon the treasurer or the paymaster?

Mr. Trotter.—Because they can only act by the instructions of the different boards.

A Lord.—You stated that you delivered two kinds of accounts to lord Melville, the current account, and the other account; were those mere copies of the accounts, or accounts made up from the accounts at Messieurs Coutts’?

Mr. Trotter.—They had no connexion whatever with the accounts at Messieurs Coutts; they were accounts between lord Melville and myself.

A Lord.—Whether you know that the public sustained any loss by the removal of the money from the Bank of England to Messieurs Coutts’?



Mr. Trotter.—I do not know any loss that the public have sustained.

A Lord.—Do you know, whether the public did not sustain a loss, by the death of Mr. Jellicoe; and how that loss arose?

Mr. Trotter.—That was not a loss in consequence of having removed the money from the Bank, to the bank of Messieurs Coutts'.

A Lord.—Could that loss have happened, if the money had continued to be lodged in the Bank?

Mr. Trotter.—That circumstance could not have been affected by the money being continued in the Bank.

A Lord.—Whether the account, called the Iron Chest account, was principally of a public nature?

Mr. Trotter.—The Iron Chest account, was an account of monies which were drawn from the Bank, and placed into the hands of Messieurs Coutts'.

A Lord.—Having said, that my lord Melville paid a great deal more attention to accounts that were public, than to his own private accounts; what kind of attention did he pay to this Iron Chest account?

Mr. Trotter.—Lord Melville, I do not think ever saw the Iron Chest account; I beg to explain to your lordships, that the *Iron Chest* account is a different account from the Chest account I have been speaking of.

A Lord.—The account you are asked concerning, is the Chest account, which you repeatedly, in the course of your examination, mentioned?

Mr. Trotter.—As my mind ran on the other account, I forgot the question that I was asked respecting it.

A Lord.—The question is; as you have stated that my lord Melville paid a great deal more attention to accounts that were public, than to his own private accounts; what kind of attention did he pay to the Chest account? meaning that account you have been repeatedly referring to, in the course of your examination?

Mr. Trotter.—I do not know what attention lord Melville paid to that account, when he had the documents in his own possession; but he never paid any particular attention to it, during the time I was with his lordship, when I had presented it to his lordship.

A Lord.—Having said that when you delivered the private accounts to lord Melville (the account between you and lord Melville), his lordship was not in the course of investigating those accounts, or comparing the vouchers with them; if a complete investigation of those accounts, had taken place, between lord Melville and you, would it not then have appeared, that the monies in that account were monies advanced out of the public monies?

Mr. Trotter.—I apprehend it would.

A Lord.—When the application was made to lord Melville, upon the subject of the purchase of East India stock, was any reference

made to the current price of that stock, at that time?

Mr. Trotter.—I do not recollect any reference made to the current price at that time, further than by a comparison to what his lordship expected would be the rise that stock would ultimately arrive at, at a distant time; that was the only time lord Melville ever gave me his opinion upon the value of it; and at no time whatever did his lordship ever insinuate to me, in the smallest degree, his expectations of the rise or fall of stock, excepting in that instance.

A Lord.—You having said, that for a considerable length of time, after the purchase of this stock, the interest of the money, which was borrowed for the purchase of it, amounted to a greater sum than the dividend arising from that stock. Whether any person lending money, in the ordinary course of dealing by money-lenders, would have considered the assignment of such stock, putting it in the name of the lender, as a collateral security for the money advanced for that stock?

Another Lord.—That is a question calling upon the witness to enter into an argument, and not to answer to a fact. I submit that cannot be put.

The question was waived.

A Lord.—How and in what manner was that 3,000*l.* you spoke to in your examination, repaid?

Mr. Trotter.—I can only recollect that it was repaid by his lordship to me, at two different times, in two different sums.

A Lord.—Did you take any receipt of lord Melville for that money which you paid him?

Mr. Trotter.—I did not.

A Lord.—Having stated that in the account between lord Melville and you, lord Melville was credited for the dividends upon the India stock, and debited for the interest of the money lent, in whose name was that receipt put?

Mr. Trotter.—No name was used at all; his lordship got credit by the dividend, and was debited to the interest, without any name being specified.

A Lord.—Supposing lord Melville had not rejected, as he did, with indignation, the proposition you made of advancing to lord Melville the public money, as the means of purchasing that stock; in what manner would it have been debited in the course of business?

Mr. Trotter.—As the fact did not exist, I have never taken it into consideration.

A Lord.—Would it have been debited in the manner in which it was debited?

Mr. Trotter.—I should not make any entry of any sort without a due consideration, and I cannot, in my present situation, give it a due consideration.

A Lord.—You stated, that after lord Melville had rejected the proposal that you made, to purchase India stock out of the public money, you suggested to lord Melville that you



could procure the money from your relation, Mr. Lind, upon the security of that stock; that failing to procure the money, you stated, notwithstanding, to lord Melville, that you had so procured it, and the stock was in fact purchased, as I understood you, in the name of Mr. Lind. Was lord Melville acquainted with the circumstance of the stock having been so purchased in the name of Mr. Lind?

Mr. Trotter.—Lord Melville knew that the stock stood in the name of Mr. Lind; but I never told lord Melville that I had actually procured Mr. Lind to advance the money.

A Lord.—In the course of the transaction of the purchase of this stock between you and lord Melville, was that transaction so conducted as if the money had been *bonâ fide* advanced for the purchase of that stock by Mr. Lind?

Mr. Trotter.—It was.

A Lord.—What do you mean by the Iron Chest account?

Mr. Trotter.—That was an account that was kept in the Navy-pay-office by Mr. Wilson and myself, in which we entered the sums of money that were taken from the Bank and put into Mr. Coutts', and *vice versa*, the sums drawn from Coutts, and issued to the sub-accountants.

A Lord.—What is it that you mean by Chest account?

Mr. Trotter.—The Chest account was one of those accounts which I kept with lord Melville, upon which I had been required to advance sums of the application of which I knew nothing.

A Lord.—What was the first item of the Chest account?

Mr. Trotter.—It was the sum of 10,600*l*.

A Lord.—Were there other advances upon the face of that Chest account, immediately after the opening of it?

Mr. Trotter.—There were other sums advanced upon that account, but not immediately after the opening of it.

A Lord.—How soon?

Mr. Trotter.—My memory does not serve me to state.

A Lord.—You have said that in the year 1797 the advances for payment of the subscription of the loyalty loan were transferred from the account current to the Chest account; were there not many intermediate advances on the Chest account?

Mr. Trotter.—There were more than one, but not many.

A Lord.—Whether, on the face of the Chest account, delivered the half year after the transfer of the loyalty loan was made from the current account to the Chest account, it might not appear to lord Melville that such transfer was made?

Mr. Trotter.—It must have appeared.

A Lord.—You have said that at the close of lord Melville's treasurership, you showed to lord Melville the sum advanced to him from the public money. I desire to know if lord

Melville explained to you from what sources that money was to be repaid?

Mr. Trotter.—I have said that I gave a general statement of lord Melville's accounts between his lordship and myself; and he consequently pointed out different sources from which money would arise in repayment of those sums, and which he expressed a wish to repay before he left the treasurership.

A Lord.—Did lord Melville express any surprise at the state of his account?

Mr. Trotter.—He did, he was very much surprised to find the balance was so much against him.

A Lord.—Having stated that you conceived that no loss or detriment accrued to the public by drawing the money from the Bank, and putting it in the hands of private bankers, state whether withdrawing so large a sum of money from the Bank, would not put it less in the power of the Bank, to make those discounts on which the trading part of the public depend?

Mr. Trotter.—I do not know how far it would be proper for me to enter into an argument on that subject with your lordships.

Another Lord.—I submit to your lordships, we do not sit here to hear arguments.

The question was waived.

A Lord.—Having stated that you alone derived the benefit from this application of a part of the public money,—whether, without that application of the public money you have stated, you would have been in the condition to have made the advances you have stated you made to lord Melville, without charging any interest?

Mr. Trotter.—I could not; unless, finding that I had not the means of augmenting my fortune in the manner I did, I might have turned my attention elsewhere, and then I might have been able to have advanced these monies.

A Lord.—In what year was the money placed at Messieurs Coutts's?

Mr. Trotter.—Either in 1786 or 1787, I do not know which; at least I believe so.

A Lord.—Have you any books to which you could refer, and which books would enable you to give a more specific answer to the question?

Mr. Trotter.—I have not, unless I speak from the books of my bankers.

A Lord.—Have you got those books, so as to make the reference?

Mr. Trotter.—I can have access to those books by applying to my bankers.

A Lord.—Did you propose to lord Melville to draw the money out of the Bank, and to place such money at Mr. Coutts's?

Mr. Trotter.—I did apply to lord Melville for leave so to do.

A Lord.—Did all the money, that from time to time you deposited in Messieurs Coutts's bank, arise from the general permission you before spoke to?



Mr. Trotter.—Entirely so—and in no instance was it otherwise specifically, as far as I recollect.

A Lord.—Did you know, at the time when you deposited the sum of money in Mr. Coutts's bank, that the act of parliament had passed a year or two years before?

Mr. Trotter.—I knew that an act had passed to regulate the business of the Pay-office; but I do not know that I adverted to it, at the instant I made the application to lord Melville to draw the money from the Bank, and put it into the hands of Messieurs Coutts.

A Lord.—Did lord Melville, when you made this application to his lordship, make any answer?

Mr. Trotter.—He did not, to the best of my recollection.

A Lord.—Did the settlement of the release, which contained in it the destruction of the vouchers, or delivering up all the vouchers, originate either with lord Melville or you?

Mr. Trotter.—I do not think it originated with either; I am sure lord Melville was not consulted upon the subject at all.

A Lord.—With whom did that clause, respecting the destruction of the vouchers, originate?

Mr. Trotter.—It must have originated in conversation between my solicitor and myself.

A Lord.—Whether what passed between lord Melville and you, upon the probable rise of India stock, was in the course of official communication between lord Melville and you, or were you sent for by his lordship?

Mr. Trotter.—I was not sent for by his lordship; I believe I was at Wimbledon, when I had the honour of waiting upon his lordship, in his private capacity.

A Lord.—Whether the first suggestion upon the subject of this stock, originated with lord Melville, or proceeded from you?

Mr. Trotter.—It was suggested by me, in consequence of finding his lordship wished to make some family arrangement of that sort.

A Lord.—Then I understand, the first expression of lord Melville's opinion of the value of India stock, originated with lord Melville, and was not suggested to lord Melville by you?

Mr. Trotter.—It originated in the suggestion of myself to his lordship.

A Lord.—Did the original idea of purchasing the East India stock, arise from any desire of lord Melville to be possessed of India stock, although the subsequent conversation was in consequence of what you suggested?

Mr. Trotter.—As it all passed in a conversation, not premeditated or sought for by either party, I am quite at a loss to say who first started the subject.

A Lord.—Was the suggestion given to have recourse to some money-lender, to furnish the money, for the stock that was proposed to be purchased, a part of the same conversation, when it was first proposed to purchase the stock?

Mr. Trotter.—It was in the same conversation; and on the impulse of the moment.

A Lord.—Was the suggestion then adopted, upon your making it?

Mr. Trotter.—It was.

A Lord.—How soon afterwards did you proceed to carry it into effect?

Mr. Trotter.—I endeavoured for some considerable time to fulfil what I had suggested to his lordship it might be possible for me to effect; but finding it was not so, I then fell upon the mode, which I have already described, of advancing the money myself, as I was unwilling to disappoint lord Melville of what I had so sanguinely promised him I could carry into effect.

A Lord.—When you had carried it into effect, by that mode, did you communicate to lord Melville, that you had completed it; and how soon did you name the person who had advanced the money?

Mr. Trotter.—I did not say that any person had advanced the money, but I told him the stock was purchased, and invested in the name of Mr. Montague Lind, the person I had mentioned to his lordship in the original conversation.

A Lord.—Did you, upon making that communication to lord Melville, receive any, and what answer?

Mr. Trotter.—Nothing farther than his approbation of its having been done.

A Lord.—Were the dividends upon the India stock paid to Mr. Lind, or carried to the credit of lord Melville?

Mr. Trotter.—That I have already explained.

A Lord.—At what period of time did you begin building your house near Edinburgh?

Mr. Trotter.—As nearly as I can recollect, I made a considerable addition to my house, which I began about four or five years ago.

A Lord.—Is that house furnished?

Mr. Trotter.—I removed the furniture from my house at Blackheath, with which it is now furnished?

A Lord.—Were you ever interrogated by lord Melville, as to the expense of building this house?

Mr. Trotter.—The expense of building this house may not be so great as noble lords may have heard, not so great as to induce lord Melville to ask me any questions upon that subject.

A Lord.—I think the release executed between the noble lord and you, was executed first by lord Melville in Scotland, and some few days after by you in London; was it prepared in London under your direction, or in Scotland under the direction of the noble defendant?

Mr. Trotter.—It was prepared in London, and sent to his lordship to execute in Scotland.

A Lord.—Was any draft of this release sent to the noble defendant in Scotland, to be sub-



ject to his correction, previous to his execution of the deed itself?

Mr. Trotter.—It was not, to the best of my knowledge; I do not know whether the solicitor might have sent it, but I am certain I did not.

A Lord.—Were any alterations or corrections, to your knowledge, made in it by lord Melville, previous to his lordship's execution of it.

Mr. Trotter.—Certainly not.

A Lord.—Whether, within your experience or knowledge of the noble defendant's unlimited confidence in you, and of the incorrect manner in which the noble defendant used to transact his own private concerns, you believe that lord Melville examined with any accuracy the contents of the deed before he executed it?

Another Lord.—I really am afraid, that a witness who was in London, must not state his belief of what lord Melville did in Scotland.

The question was waived.

A Lord.—Give to the Court an account of the whole transaction concerning the release; and, in giving to the Court an account of the whole of that transaction, begin with stating what was the occasion or necessity for having that release at all?

Mr. Trotter.—The necessity originated in my wish to have all my affairs settled with lord Melville, as I always apprehended (I hope I may be allowed to say) that his lordship was not careful of preserving his papers or accounts, so as to be satisfactory to his heirs or successors; and that there might be no difficulty or argument about showing that a final settlement had been made, to either his lordship's heirs or to my own, I was anxious that a release should pass, by which it only became necessary that one voucher should be preserved. I had proposed it some time before it was carried into execution, and my mind became every day still more impressed with the necessity of having this executed; and in some conversation with his lordship I may have proposed it again, and told him that I would forward releases for his lordship, to be signed in Scotland, if he would give me leave; but this I state, more from knowing that that must have been the circumstance, than from an actual recollection of the time or place when such conversation passed. I then applied to my solicitor in London, to draw out a release for such purpose; and as he was my intimate friend and counsellor, as well as solicitor, he proceeded very much from his own knowledge of my situation and connexion with lord Melville, in drawing up that release: the draft was submitted to me, as it has been brought to my recollection by the honorable managers, who have possessed themselves of that draft, otherwise I had forgot the circumstance; but I find that I had seen that draft, by several words being written upon it in my

own writing: it was afterwards brought to me by Mr. Spottiswoode, fairly copied out, and, to the best of my recollection, forwarded by me to his lordship in Scotland, and he returned it to me, by which the transaction was finally closed.

A Lord.—What do you mean by returned it?

Mr. Trotter.—Lord Melville returned the release, signed by his lordship, to me—and I executed it in London.

A Lord.—State what there was in the correspondence upon the subject of this release, subsequent to the time when lord Melville left London for Scotland?

Mr. Trotter.—I recollect no correspondence whatever about it, nor do I believe that any correspondence ever existed.

A Lord.—Had you at any time been examined by the commissioners?

Mr. Trotter.—I had not.

A Lord.—Was any person, on the part of lord Melville, present at the composing that deed in London?

Mr. Trotter.—There was not.

A Lord.—What was done in consequence of that deed?

Mr. Trotter.—I do not recollect any thing that was done in consequence of that; I do not know what is alluded to.

A Lord.—Whether, in point of fact, any books and accounts were destroyed, or had been destroyed, either previous or subsequent to that deed?

Mr. Trotter.—Subsequent to the deed; I thought it no longer necessary to preserve lord Melville's vouchers.

A Lord.—Previous to the deed?

Mr. Trotter.—Previous to the deed I do not recollect any being destroyed.

Lord Chancellor.—Let the deed be referred to.

Then the following extract from the Release was read:

“And they have either mutually delivered up to each other, or resolved and agreed mutually to cancel and destroy all the vouchers or other memorandums and writings that at any time heretofore may have existed, passed, or been interchanged between them, relative to the said accounts, and the different items and articles of which the said accounts are composed or consist.”

A Lord.—You having attended to the recital of the deed, state whether, as it is put in the alternative, either that they had been destroyed or were resolved to be destroyed: had there, to your knowledge, been any books or accounts delivered up or destroyed, previous to the execution of that deed?

Mr. Trotter.—I do not know it, but I believe lord Melville seldom kept his vouchers at all: with regard to myself, I had destroyed no voucher previous to that time.



*A Lord.*—The question is, whether you had, previous to the execution of this deed, delivered up or destroyed any books or accounts referable to the subject of that release?

*Mr. Trotter.*—I had not to the best of my recollection.

*A Lord.*—Have you subsequent to that time?

*Mr. Trotter.*—I have, as I thought it no longer necessary to preserve them; that being the object of getting a release.

*A Lord.*—How soon after being in possession of a salary of 500*l.* a year, did you find yourself to be in a condition to be a lender of money?

*Mr. Trotter.*—I explained to this Court yesterday, that I was put in possession of a sum of money as soon as I was appointed to the office, by which I was enabled to become a lender of money.

*A Lord.*—You have stated that you made a proposition to lord Melville, which his lordship indignantly rejected; did you ever make any such proposition at any other time?

*Mr. Trotter.*—I never did.

*A Lord.*—Did lord Melville ever allude to that proposition afterwards?

*Mr. Trotter.*—I do not recollect that his lordship ever did.

*A Lord.*—Did lord Melville ever say any thing to you, subsequent to the time of your having made that proposition, from whence you collected a supposition on the part of his lordship that you were so using the public money?

*Mr. Trotter.*—Never.

*A Lord.*—Does the paymaster of the navy give any security?

*Mr. Trotter.*—None.

*A Lord.*—Do you know whether, in the course of office, the treasurer of the navy takes any oath?

*Mr. Trotter.*—I believe none.

*A Lord.*—You have said that lord Melville was charged interest upon the money advanced upon this India stock, at the time when the interest was greater than the dividend; can you point out at what time that interest was charged?

*Mr. Trotter.*—The honourable manager has shown that the interest very nearly corresponded with the dividend, and consequently no sum could be charged; but to the best of my recollection there was only 13,500*l.* of that stock instead of 14,500*l.* upon which the honourable manager has calculated; in which case the interest would have exceeded the dividend, and of course I debited his lordship with one, and credited him with the other.

*A Lord.*—Having stated that you in fact did charge interest, that must have arisen from the interest being greater than the dividend: will that fact depend upon whether you are not mistaken with regard to the sum being 13,500*l.* or 14,500*l.*?

*Mr. Trotter.*—No, it may be from an error of the present moment in my calculation, be-

cause I did not debit lord Melville with that specific overplus, but I debited him with the interest, and I credited him with the dividends; by which it arose in my mind, at the moment I spoke, that the interest was greater than the dividend, and of course from that manner of entering the interest and the dividend, it became a charge upon lord Melville.

*A Lord.*—Do you know the date of the appointment of the naval commissioners?

*Mr. Trotter.*—I do not.

*A Lord.*—Do you recollect when the naval commissioners issued their precept to the Navy-pay-office for the return of their balances?

*Mr. Trotter.*—I do not recollect it at this moment.

*A Lord.*—Do you recollect at what time, or within a month of the time, when the return was made to the commissioners of naval inquiry requiring the balances of the Navy-pay-office?

*Mr. Trotter.*—That return was made I believe in the month of January 1803, but the precept had been issued many months before, I believe.

*A Lord.*—How soon was that return made before you gave directions for the execution of this release?

*Mr. Trotter.*—A very short time I believe.

*A Lord.*—At the time you were so anxious to have this release executed, were you acquainted that lord Melville was supposed to be in a declining state of health?

*Mr. Trotter.*—If the fact was so, I was undoubtedly acquainted with it, but I do not recollect at this moment that that weighed upon my mind.

*A Lord.*—Had the knowledge of that return any effect on your mind in procuring this release?

*Mr. Trotter.*—I believe it had.

*A Lord.*—At the time when you received permission from lord Melville, to draw the public money from the Bank, and to place it in your own name in the hands of Messieurs Coutts, or at any subsequent time, did you receive any injunction from his lordship, not to apply any part of that money to your own use?

*Mr. Trotter.*—I received no such injunction; but I received no prohibition—I mean I received no permission to do so.

*A Lord.*—Was your reason for not repeating the proposition the fear of giving offence to the noble lord?

*Mr. Trotter.*—I was afraid of giving offence to the noble lord; and that it would induce his lordship to relinquish an advantage which I was in hopes his lordship would ultimately derive from it.

*A Lord.*—Whether, though no such permission had been given by lord Melville for the removal of money from the Bank to Messieurs Coutts's you could not nevertheless have applied the money to your own use?

*Mr. Trotter.*—I answered that question yes-



terday, by saying I could certainly have done so, though I might have looked upon it as still a greater act of delinquency upon my part.

*A Lord.*—You have said, that the first idea of the proposition of a release, arose from the conversation between lord Melville and yourself; can you assign any date to that conversation?

*Mr. Trotter.*—I believe it was as far back as our general settlement in the year 1800.

*A Lord.*—Did you in that conversation propose that there should be instructions and directions for the mutual destruction of vouchers?

*Mr. Trotter.*—I never mentioned that clause in the release to his lordship, nor did I recollect that such clause existed in that release, till I was reading it once at the time the honourable manager called upon me to read it; so little impression had it made upon my mind, and so little meaning had I in desiring it to be put in.

*A Lord.*—You said that the interest fell short of the dividends; do you mean that the dividend upon the stock did not produce as much money as the interest upon the money lent?

*Mr. Trotter.*—That was the impression of my mind when I spoke yesterday; but that was upon a calculation which I made yesterday; which I find that, although erroneous, is not materially so, only ten pounds, I believe.

*A Lord.*—Were any of those accounts and vouchers, which it was the object of the release to have mutually destroyed or given up, at that time in the hands of lord Melville?

*Mr. Trotter.*—Lord Melville delivered no vouchers to me, and I do not know whether he has destroyed them at this moment or possesses them or not, I know nothing of them.

*A Lord.*—What was the name of that solicitor and friend who prepared this deed?

*Mr. Trotter.*—Mr. John Spottiswoode of Sackville-Street.

*A Lord.*—Was that gentleman generally employed in law affairs respecting Scotch property?

*Mr. Trotter.*—He was, I believe.

*A Lord.*—Was not that Mr. Spottiswoode a man of considerable eminence in his profession?

*Mr. Trotter.*—He was of considerable eminence, and a most eminent character also.

*A Lord.*—Does it consist with your knowledge that that release was drawn by Mr. Spottiswoode, according to his own professional knowledge, as to what would be the right form of such a release; or, were any directions given by you, with respect to any clauses that should be inserted in it?

*Mr. Trotter.*—I gave no specific directions respecting that clause, but we had a conversation upon it: I am sure it must have proceeded from his advice, although I do not recollect that neither.

*A Lord.*—Was that clause in the release,

which states the consent of both parties to the registration of that instrument in the public records of Scotland, suggested by you or by Mr. Spottiswoode?

*Mr. Trotter.*—I know so little of deeds of that description, that I did not know that such a clause was in the deed.

*A Lord.*—Does it consist with your knowledge, that according to that clause, this instrument is or is not to be publicly recorded?

*Mr. Trotter.*—I have never taken any steps towards having it publicly recorded: if it has been publicly recorded, it must have been by Mr. Spottiswoode, before it came to my hands.

*A Lord.*—Having stated that the intimation which you had received from the commissioners had an operation on your mind, when you directed the release to be prepared, was the operation of that fact upon your mind, to your knowledge, communicated to lord Melville?

*Mr. Trotter.*—I do not recollect that I ever stated any thing upon that subject to lord Melville?

*A Lord.*—Do you know whether any other person ever stated to lord Melville that, on account of that transaction with the commissioners, it would be expedient that such a release as this should be executed?

*Mr. Trotter.*—No such fact consists with my knowledge.

*A Lord.*—When you communicated to lord Melville your advice, that the money should be removed from the Bank to Mr. Coutts' shop, had you at that time formed any intention of applying the money to private purposes?

*Mr. Trotter.*—It is not impossible that I had made use of the public money before that time; but I had it not in contemplation, to the best of my remembrance, that this would add any facility to my doing so in future after that time.

*A Lord.*—How long was it after the money had been placed at Mr. Coutts' that you first began to employ it, in the various ways in which you have stated you did employ it, for your private use and benefit?

*Mr. Trotter.*—I believe I had begun to employ it before it had gone there; and I continued it after it had gone there; there was no interruption that I know of.

*A Lord.*—You have stated that it would appear, from the Chest account and the account current, that the public money had been employed; and you have also stated that when you presented the accounts to lord Melville, lord Melville did not examine the accounts in your presence. Did you ever call the attention of lord Melville to the items of the accounts so delivered, as items that would show that he applied the public money to private use and benefit?

*Mr. Trotter.*—I do not recollect that I ever did, or made any observation of that nature to his lordship.

*A Lord.*—Then are we to understand that



you being the paymaster of lord Melville, and yourself apprized that you were applying public money for private purposes, suffered lord Melville to take those accounts into his possession, without suggesting to him that such matter would appear from examination of the account?

*Mr. Trotter.*—As lord Melville never communicated to me the application which he meant to make of these sums, I did not think myself at liberty to make any observation to his lordship upon that transaction.

*A Lord.*—Having stated that you frequently drew upon the Bank beyond the amount of the bills assigned for payment, did you ever distinctly or otherwise communicate that fact to lord Melville?

*Mr. Trotter.*—I was not sensible at the time that I did it; I never had it in contemplation whether I drew a greater or a smaller sum than the bills assigned for payment. I was guided by the sum which I found remaining unclaimed in my hand, which would not be wanted, without making any calculation of the sort. I did not mention it to lord Melville, not thinking it at all necessary in the general management of the business.

*A Lord.*—Having stated that the India stock was invested in the name of Lind, was it invested in the name of Lind, not only for the purpose of being a security for the money with which it was purchased; but also, for the further purpose of inducing lord Melville to believe, that the money had been actually furnished by Lind?

*Mr. Trotter.*—I believe in my evidence yesterday, I stated to your lordships that a document had lately fallen into my hands, by which I found that the stock was originally invested in the name of the person who made the purchase, that it was some time before it went into the name of Mr. Lind; it was during that time that I did not communicate any thing upon the subject to lord Melville, I believe.

*A Lord.*—Was lord Melville, to your knowledge, ever acquainted that that stock was in any other name than the name of Lind?

*Mr. Trotter.*—I do not think his lordship ever was.

*A Lord.*—Having stated that from time to time you presented accounts both public and private to lord Melville, and that when a settlement was asked for, his lordship postponed from time to time coming to that settlement, was there, in point of fact, any settlement till the time of the general release?

*Mr. Trotter.*—I stated to your lordships yesterday, that there was a general settlement of his lordship's accounts at the time his lordship left the office in May, 1800.

*A Lord.*—Who was it that suggested to you the propriety of keeping a Chest account?

*Mr. Trotter.*—It was merely giving a name to an account which I found necessary to raise in debiting lord Melville with that 10,600*l.* which I found not in the Bank when I succeeded Mr. Douglas as paymaster.

*A Lord.*—Why did you entitle it a Chest account?

*Mr. Trotter.*—I recollect nothing of the circumstance; but if I may be allowed to suppose it, I should rather think that lord Melville desired me to raise an account, and to call it a Chest account.

*A Lord.*—Did lord Melville explain to you that that sum of 10,600*l.* was public money?

*Mr. Trotter.*—He did not explain it to me; there was no necessity for that, for I knew it to be so.

*A Lord.*—You have stated that you advanced the money with which the India stock was purchased although it stood in the name of Mr. Lind; did you receive from Mr. Lind any security for that East-India stock in his name purchased with your money?

*Mr. Trotter.*—I received an acknowledgment to that purport.

*A Lord.*—Did that acknowledgment state for whom the purchase was made?

*Mr. Trotter.*—It did not; at least it did not mention lord Melville's name, but my own.

*A Lord.*—If the speculation had succeeded, had lord Melville any means of getting at this money; especially if you were dead?

*Mr. Trotter.*—I am free to say it never entered my consideration.

*A Lord.*—Since you took no acknowledgment from Mr. Lind, that the stock was purchased with the public money, suppose that speculation had turned out advantageously, what security had lord Melville for the fruit of it?

*Mr. Trotter.*—None but my own books having fully described the transaction.

*A Lord.*—Give a more particular answer to that question?

*Mr. Trotter.*—I do not think I have it in my power to do so.

*A Lord.*—No written acknowledgment having been given by Mr. Lind to you in consequence of the investment of the stock in his name, would not lord Melville have been bound to pay the money to Mr. Lind, though Mr. Lind had never advanced it?

*Mr. Trotter.*—I do not recollect any document that passed between us, except an acknowledgment from Mr. Lind, that the 2,000*l.* stock belonged to me.

*A Lord.*—Was there any written acknowledgment given by Mr. Lind, that that stock was purchased with your money, and not with Mr. Lind's?

*Mr. Trotter.*—Yes, there was.

*A Lord.*—Whether you did not put lord Melville in the situation of having no advantage from this speculation, if it turned out an advantageous speculation; and yet to have been a loser, by being compelled, in case of your death, to pay this money to Mr. Lind, as if the money had been advanced by him?

*Mr. Trotter.*—I did not consider lord Melville in that situation, the transaction was fully described in my book; and those I have



appointed to be my executors, I am certain would have done justice to lord Melville as well as to myself.

*A Lord.*—Whether any person, except yourself, in the Navy-pay-office, received any advantage, directly or indirectly, from the use of the public money?

*Mr. Trotter.*—I believe that some of the sub-accountants have derived some small advantages, but I am not at all acquainted with them, I can speak to nothing but my own transactions.

*A Lord.*—Can you take upon you to swear, that in all your transactions in which you have employed the public money, lord Melville has been benefited, he being previously privy to such transactions, and from which he expected a benefit?

*Lord Chancellor.*—I cannot put a question which assumes a fact that has not been proved.

The question was waived.

*A Lord.*—The draft of a release has been given in evidence; your lordships recollect the witness told you there were notes upon the face of it in his own hand-writing; I wish the draft may be put into his hand, and that he may point out the notes which are in his own hand-writing.

*Another Lord.*—I submit to your lordships this draft cannot be given in evidence in this way, because, if it is to be proved at the bar as matter of evidence, the counsel on the other side may cross-examine upon it.

*Lord Chancellor.*—That draft has not yet been given in evidence.

*A Lord.*—My mistake arose from this: your lordships must all recollect the witness stated that he had seen his notes upon this draft.

[The witness was directed to withdraw.]

*Mr. Whitbread.*—My lords, the Commons now propose to give in evidence the order of council for the regulation of the Navy-pay-office, which was dated at the court of St. James's, 9th of August, 1786; and, for the purpose of identifying that order of council, they call upon sir Stephen Cottrell.

Then Sir *Stephen Cottrell*, knight, was called in, and, being sworn, was examined as follows:

*Mr. Whitbread.*—What is that book before you?

*Sir Stephen Cottrell.*—A volume of the council registers.

*Mr. Whitbread.*—Is there in that book an order dated the 9th of August, 1786, purporting to be for the regulation of the Navy-pay-office?

*Sir Stephen Cottrell.*—There is.

*Mr. Whitbread.*—Have you got the memorial upon which that order in council was founded?

*Sir Stephen Cottrell.*—I have.

*Mr. Whitbread.*—I wish that also to be produced in evidence before your lordships, it purports to be signed—Henry Dundas.

*Lord Chancellor.*—Is the signature acknowledged?

*Mr. Plumer.*—I admit the signature.

Then the memorial was read, from the register of the privy council, and is as follows:

“The Memorial of Henry Dundas.

“To the King's most Excellent Majesty in Council.

“Most humbly sheweth,

“That the office, which he has the honour to hold as treasurer of your majesty's navy, was settled by an order of king William in council, the 25th day of May, 1699, since which time the business of the same has been greatly augmented, and many additions made to the establishment. It has been regulated by a late act of parliament founded upon the reports of the commissioners of accounts, and the mode of conducting it altered in various particulars. Your memorialist is satisfied that these regulations will be attended with the most beneficial consequences. With this view, his duty to your majesty and to the public has actuated him to give an attentive consideration to the whole conduct and establishment of the office; and, in full persuasion of being able to execute the business of it in a manner consistent with the late regulations, he most humbly presumes to submit for your majesty's approbation, an arrangement of the whole, calculated upon principles of real economy, and formed upon a system to expedite with dispatch the various branches of the department entrusted to his charge.

“HENRY DUNDAS.”

#### ESTABLISHMENT of the NAVY PAY-OFFICE.

|                                                                  | £.  | s. | £.  | s. |
|------------------------------------------------------------------|-----|----|-----|----|
| Paymaster .....                                                  | 0   | 0  | 500 | 0  |
| PAY BRANCH.                                                      |     |    |     |    |
| Deputy Paymaster .....                                           | 400 | 0  |     |    |
| Chief Clerk for Pay-ment of Wages at } Plymouth                  | 230 | 0  |     |    |
| Ditto .....                                                      | 230 | 0  |     |    |
| Ditto .....                                                      | 230 | 0  |     |    |
| Second ditto .....                                               | 200 | 0  |     |    |
| Ditto .....                                                      | 200 | 0  |     |    |
| Ditto .....                                                      | 200 | 0  |     |    |
| First Clerk for paying Seamen's Wages in Town .....              | 200 | 0  |     |    |
| Second ditto .....                                               | 180 | 0  |     |    |
| First Clerk for making up Ships Books .....                      | 180 | 0  |     |    |
| Second ditto .....                                               | 162 | 3  |     |    |
| First Assistant Clerk for paying Wages, entering Lists, &c. .... | 90  | 0  |     |    |



|                    | £. | s. | £.    | s. |
|--------------------|----|----|-------|----|
| Second ditto.....  | 90 | 0  |       |    |
| Third ditto.....   | 90 | 0  |       |    |
| Fourth ditto.....  | 80 | 0  |       |    |
| Fifth ditto.....   | 80 | 0  |       |    |
| Sixth ditto.....   | 70 | 0  |       |    |
| Seventh ditto..... | 70 | 0  |       |    |
|                    |    |    | 2,982 | 3  |

NAVY BRANCH.

|                                                                |     |   |       |   |
|----------------------------------------------------------------|-----|---|-------|---|
| Cashier of the Navy attending Payment of Bills.....            | 400 | 0 |       |   |
| Chief Clerk for ditto .....                                    | 250 | 0 |       |   |
| Ledger Writer for the Navy Br. ....                            | 200 | 0 |       |   |
| First Ledger Copier .....                                      | 162 | 3 |       |   |
| Second ditto .....                                             | 90  | 0 |       |   |
| Assistant to the Cashier for paying Bills .....                | 80  | 0 |       |   |
| Ditto to the Chief Clerk for attending the Exchequer, &c. .... | 80  | 0 |       |   |
|                                                                |     |   | 1,262 | 3 |

VICTUALLING BRANCH.

|                                                                 |     |   |       |   |
|-----------------------------------------------------------------|-----|---|-------|---|
| Cashier of the Victualling for attending Payment of Bills ..... | 400 | 0 |       |   |
| Chief Clerk for ditto .....                                     | 230 | 0 |       |   |
| Ledger Writer.....                                              | 200 | 0 |       |   |
| First Ledger Copier .....                                       | 162 | 3 |       |   |
| Second ditto .....                                              | 90  | 0 |       |   |
| Assistant to the Cashier for paying Bills .....                 | 80  | 0 |       |   |
|                                                                 |     |   | 1,162 | 3 |

ACCOUNTANT's BRANCH.

|                                                                     |     |   |       |   |
|---------------------------------------------------------------------|-----|---|-------|---|
| Accountant for bringing up the old and keeping up new Accounts..... | 400 | 0 |       |   |
| Chief Clerk for ditto .....                                         | 250 | 0 |       |   |
| Second ditto .....                                                  | 162 | 3 |       |   |
| Third ditto .....                                                   | 162 | 3 |       |   |
| Fourth ditto .....                                                  | 90  | 0 |       |   |
| Fifth ditto .....                                                   | 90  | 0 |       |   |
| Sixth ditto .....                                                   | 80  | 0 |       |   |
| Seventh ditto .....                                                 | 80  | 0 |       |   |
| Eighth ditto .....                                                  | 70  | 0 |       |   |
|                                                                     |     |   | 1,384 | 6 |

INSPECTOR's BRANCH.

|                                                         |     |   |     |   |
|---------------------------------------------------------|-----|---|-----|---|
| Inspector of Seamen's Wills and Powers of Attorney..... | 300 | 0 |     |   |
| Assistant for ditto .....                               | 150 | 0 |     |   |
| Messenger .....                                         | 75  | 0 |     |   |
|                                                         |     |   | 525 | 0 |

The seven Clerks at 90*l.* per annum to be allowed 20*s.* per week for every week they shall actually attend; the seven at 80*l.* to be allowed 15*s.* per week; and the three at 70*l.* to be allowed 10*s.* in the same manner the weeks which they shall actually attend, to be certified to the Navy Board by the Paymaster; and they are hereby directed to make out Bills for the same, under the head of Additional Salaries. All travelling and other incidental expences arising in the Office, to be paid out of monies imprested into the Treasurer's hands, under the head of Money to pay Contingencies, upon orders from the Paymaster or Chief Clerk of each Branch, to

the Cashier, who pays the same. And the Paymaster is hereby directed to examine the said contingent account, with the said order; which finding right, he shall certify the amount to the Commissioners of the Navy, who are hereby also directed, upon such authority, to allow the same. All fees whatever to be discontinued, excepting that of the odd pence deducted from sums paid; and no farther extra gratuities are hereafter to be allowed for bringing up the account of Ex-treasurers.

CONDUCTORS.

|                                                                          |     |   |     |   |
|--------------------------------------------------------------------------|-----|---|-----|---|
| Chief Conductor, Money Sorter, and Officer for paying Contingencies..... | 200 | 0 |     |   |
| Money Conductor at Portsmouth                                            | 150 | 0 |     |   |
| Ditto .....                                                              | 150 | 0 |     |   |
| Ditto .....                                                              | 150 | 0 |     |   |
|                                                                          |     |   | 650 | 0 |

HOUSE AND DOOR-KEEPERS, MESSENGERS, &c.

|                                                                             |     |   |       |    |
|-----------------------------------------------------------------------------|-----|---|-------|----|
| Housekeeper .....                                                           | 40  | 0 |       |    |
| Keeper of Ships Books, Money Carrier, and Door-keeper to the Pay Room ..... | 140 | 0 |       |    |
| Messengers, five, at 75 <i>l.</i> each ...                                  | 375 | 0 |       |    |
| Porter to the Pay Office in Town                                            | 40  | 0 |       |    |
| Watchmen, two, at 30 <i>l.</i> each ...                                     | 60  | 0 |       |    |
| Bargemaster .....                                                           | 8   | 0 |       |    |
|                                                                             |     |   | 663   | 0  |
|                                                                             |     |   | 9,128 | 15 |

HENRY DUNDAS.

Mr. *Whitbread*.—Now we propose to read the order in council founded upon this Memorial.

Then the order in council was read, and is as follows:

“ At the Court at St. James's, the 9th of August, 1786.

“ Present,

“ The King's most excellent Majesty.

|                      |                     |
|----------------------|---------------------|
| Duke of Richmond.    | Visc. Hinchinbroke. |
| Marq. of Carmarthen. | Visc. Galway.       |
| Earl of Salisbury.   | Lord Sydney.        |
| Earl of Leicester.   | Mr. Pitt.           |

“ Whereas, the right honourable Henry Dundas, treasurer of his majesty's navy, hath represented to his majesty at this Board, that since the office of treasurer of his majesty's navy was settled by the order made in council by king William the Third, bearing date the 25th of May, 1699, the business of the said office has been greatly augmented, and many additions made to this establishment: that the office of treasurer of his majesty's



navy has been regulated by a late act of parliament, founded upon the reports of the commissioners of accounts, and the mode of conducting the said office altered in various particulars. And whereas the said treasurer of his majesty's navy has, after an attentive consideration to the whole conduct and establishment of the office, submitted for his majesty's approbation an arrangement of the whole, calculated upon principles of real œconomy, and consistent with the regulations made by parliament as above, which is as follows:

#### ESTABLISHMENT of the NAVY PAY OFFICE.

|                                                                          | £.  | s. | £.    | s. |
|--------------------------------------------------------------------------|-----|----|-------|----|
| Paymaster to the Navy .....                                              |     |    | 500   | 0  |
| <b>PAY BRANCH.</b>                                                       |     |    |       |    |
| Deputy Paymaster.....                                                    | 400 | 0  |       |    |
| Chief Clerk for Pay-ment of Wages at } Plymouth                          | 230 | 0  |       |    |
| Ditto.....Portsmouth                                                     | 230 | 0  |       |    |
| Ditto.....Chatham                                                        | 230 | 0  |       |    |
| Second ditto ..... Plymouth                                              | 200 | 0  |       |    |
| Ditto.....Portsmouth                                                     | 200 | 0  |       |    |
| Ditto.....Chatham                                                        | 200 | 0  |       |    |
| First Clerk for Payment of Seamen's Wages in Town .....                  | 200 | 0  |       |    |
| Second ditto .....                                                       | 180 | 0  |       |    |
| First Clerk for making up Ships Books .....                              | 180 | 0  |       |    |
| Second ditto .....                                                       | 162 | 3  |       |    |
| First Assistant Clerk for paying Wages, &c. ....                         | 90  | 0  |       |    |
| Second ditto .....                                                       | 90  | 0  |       |    |
| Third ditto .....                                                        | 90  | 0  |       |    |
| Fourth ditto .....                                                       | 80  | 0  |       |    |
| Fifth ditto .....                                                        | 80  | 0  |       |    |
| Sixth ditto .....                                                        | 70  | 0  |       |    |
| Seventh ditto .....                                                      | 70  | 0  |       |    |
|                                                                          |     |    | 2,982 | 3  |
| <b>NAVY BRANCH.</b>                                                      |     |    |       |    |
| Cashier of the Navy attending Payment of Bills.....                      | 400 | 0  |       |    |
| Chief Clerk to ditto.....                                                | 250 | 0  |       |    |
| Ledger Writer for the Navy Br....                                        | 200 | 0  |       |    |
| First Ledger Copier .....                                                | 162 | 3  |       |    |
| Second ditto.....                                                        | 90  | 0  |       |    |
| Assistant to the Cashier for paying Bills .....                          | 80  | 0  |       |    |
| Ditto to Chief Clerk for attending Exchequer .....                       | 80  | 0  |       |    |
|                                                                          |     |    | 1,262 | 3  |
| <b>VICTUALLING BRANCH.</b>                                               |     |    |       |    |
| Cashier of Victualling for attending Payment of Bills .....              | 400 | 0  |       |    |
| Chief Clerk for ditto .....                                              | 230 | 0  |       |    |
| Ledger Writer.....                                                       | 200 | 0  |       |    |
| First Ledger Copier .....                                                | 162 | 3  |       |    |
| Second ditto.....                                                        | 90  | 0  |       |    |
| Assistant to the Cashier for paying Bills .....                          | 80  | 0  |       |    |
|                                                                          |     |    | 1,162 | 3  |
| <b>ACCOUNTANT's BRANCH.</b>                                              |     |    |       |    |
| Accountant for bringing up the old and keeping up the new Accounts ..... | 400 | 0  |       |    |

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|                             | £.  | s. | £.    | s. |
|-----------------------------|-----|----|-------|----|
| Chief Clerk for ditto ..... | 250 | 0  |       |    |
| Second ditto .....          | 162 | 3  |       |    |
| Third ditto .....           | 162 | 3  |       |    |
| Fourth ditto .....          | 90  | 0  |       |    |
| Fifth ditto .....           | 90  | 0  |       |    |
| Sixth ditto .....           | 80  | 0  |       |    |
| Seventh ditto .....         | 80  | 0  |       |    |
| Eighth ditto .....          | 70  | 0  |       |    |
|                             |     |    | 1,384 | 6  |

#### INSPECTOR's BRANCH.

|                                                         |     |   |
|---------------------------------------------------------|-----|---|
| Inspector of Seamen's Wills and Powers of Attorney..... | 300 | 0 |
| Assistant to ditto.....                                 | 150 | 0 |
| Messenger .....                                         | 75  | 0 |

525 0

The seven clerks at 90*l.* per annum to be allowed also 20*s.* per week for every week they shall actually attend; the seven at 80*l.* to be allowed 15*s.* per week; and the three at 70*l.* to be allowed 10*s.* in the same manner; the weeks which they shall actually attend to be certified to the Navy Board by the Paymaster, who are to make out bills for the same, under the head of additional salaries. All travelling and other incidental expences arising in the Office, to be paid out of monies imprested into the Treasurer's hands, under the head of money to pay contingencies, upon orders from the Paymaster or Chief Clerk of each branch, to the officer who pays the same; and the Paymaster is to examine the said contingent account with the said orders; which finding right, he shall certify the amount to the Commissioners of the Navy, who are upon such authority, to allow the same.—*All fees whatever to be discontinued* excepting that of the odd pence deducted from sums paid; and no farther extra gratuities are hereafter to be allowed for bringing up the accounts of Ex-treasurers.

#### CONDUCTORS.

|                                                                         |     |   |
|-------------------------------------------------------------------------|-----|---|
| Chief Conductor, Money Sorter and Officer for paying Contingencies..... | 200 | 0 |
| Money Conductor at Portsmouth                                           | 150 | 0 |
| Ditto ..... Plymouth...                                                 | 150 | 0 |
| Ditto ..... Chatham ...                                                 | 150 | 0 |

650 0

#### HOUSE AND DOOR-KEEPER, MESSENGERS, &c.

|                                                                             |     |   |
|-----------------------------------------------------------------------------|-----|---|
| Housekeeper .....                                                           | 40  | 0 |
| Keeper of Ships Books, Money Carrier, and Door-keeper to the Pay Room ..... | 140 | 0 |
| Messengers, five, at 75 <i>l.</i> per annum                                 | 375 | 0 |
| Porter at the Pay-office in Town                                            | 40  | 0 |
| Watchmen, two, at 30 <i>l.</i> each ...                                     | 60  | 0 |
| Bargemaster .....                                                           | 8   | 0 |

663 0

9,128 15



"His majesty having taken the said representation, and the proposed establishment of the Navy-pay-office, into his royal consideration, and having received the opinion of a committee of his majesty's most honourable privy council thereupon, is pleased, with the advice of his privy council, to approve of the said proposed establishment of the Navy-Pay-office, and to order (as it is thereby ordered), That the right honourable the lords commissioners of his majesty's treasury, and the commissioners for executing the office of lord high admiral of Great Britain, do give all the necessary directions for carrying the same into effect.

"W. FAWKENER."

*A Lord.*—Before your lordships proceed, I wish to state that in reflecting on the evidence I have heard, there appear to be such contradictions in the evidence of Mr. Trotter, that it appears to me fair to him, and necessary for your lordships proper understanding of his evidence, that he should be once more examined.—It strikes me that in fairness to him it had better be on another day than on this day.—A witness after being such a length of time under examination, cannot recollect himself so well as on another day.—I am prepared to go on, but if it strikes your lordship as it strikes me I only give notice that I shall move for his attending this house upon the next day of our meeting.

*Mr. Morris.*—It has been already stated to your lordships that various sums of money were paid into the hands of sir William Forbes and company, and Mansfield and company, on account of the noble defendant. On the part of the Managers, I have to propose to your lordships, to call witnesses who shall establish before your lordships, out of what fund these monies were paid, and how they were applied.—My lords, that they were paid out of the money in the hands of Mr. Trotter, and that they were applied to the advantage of the noble lord, inasmuch as they operated to reduce the sum with which the noble lord was chargeable, for interest upon the sums he had overdrawn. The first witness whom I have to call before your lordships for that purpose will be Mr. Robert Trotter.

Then *Robert Trotter*, esq. was called in, and, having been sworn, was examined as follows:

*Mr. Morris.*—Are you not a writer to the signet, and brother to Mr. Alexander Trotter, the last witness?

*Mr. R. Trotter.*—I am.

*Mr. Morris.*—Did you in the year 1787. receive any directions from your brother, Mr. Alexander Trotter, to pay any money on account of the noble defendant, into the house of sir William Forbes and company, and of Mansfield and company?

*Mr. R. Trotter.*—I did.

*Mr. Morris.*—Did you pay these sums into the hands of those persons, and what were the sums?

*Mr. R. Trotter.*—I did pay them.

*Mr. Morris.*—What were the sums?

*Mr. R. Trotter.*—I paid in to messieurs Mansfield, Ramsay, and company, 3,374*l.*

*Mr. Morris.*—What paper is that in your hand?

*Mr. R. Trotter.*—A letter from my brother to me.

*Mr. Morris.*—It is a letter which was in evidence before your lordships yesterday, from which Mr. Alexander Trotter refreshed his memory.

*Mr. R. Trotter.*—And to sir William Forbes 2,000*l.*

*Mr. Morris.*—Are you speaking to the fact from your own recollection, or only because you see it in that letter?

*Mr. R. Trotter.*—I did not recollect the least of it till I looked into my books.

*Mr. Morris.*—Are those books, by which you refreshed your memory, books of your own keeping?

*Mr. R. Trotter.*—They are books written by my own clerks.

*Mr. Morris.*—Are they not your own books?

*Mr. R. Trotter.*—Yes.

*Mr. Morris.*—Have you any doubt of the fact of having paid the sums?

*Lord Chancellor.*—Do you know that you have paid these sums?

*Mr. Adam.*—I beg to know whether these books are in his own hand-writing?

*Mr. R. Trotter.*—No, in the hand-writing of my clerk.

*Mr. Adam.*—I submit to your lordships he cannot refresh his memory from those books.

*Mr. Morris.*—Look at the signature to that account.

*Lord Chancellor.*—What is that paper?

*Mr. R. Trotter.*—An account between my brother and me, of the 31st of Dec. 1787.

*Lord Chancellor.*—Is that account signed by you?

*Mr. R. Trotter.*—It is.

*Mr. Morris.*—Does that account contain the sums in question?

*Lord Chancellor.*—State the fact to the House.

*Mr. R. Trotter.*—I have no doubt that the fact is perfectly exact, because it was an account furnished by myself.

*Mr. Morris.*—Does that account enable you to say that the sums were so paid into these houses?

*Mr. R. Trotter.*—I have no doubt but they were.

*Mr. Morris.*—What were the sums?

*Mr. R. Trotter.*—3,374*l.* to messieurs Mansfield, Ramsay and company, and 2,000*l.* to sir William Forbes and company.

*Mr. Morris.*—What is the date of those payments?

*Mr. R. Trotter.*—The 23rd of July 1787.

*Mr. Morris.*—Did you, in pursuance of the



directions of that letter, transmit any receipts from those houses upon payment of those sums of money?

Mr. R. Trotter.—Yes, I sent them to my brother---when I say so, I speak from looking into my letter and these accounts, because I have no recollection of the transaction myself.

Mr. Morris.—Are these accounts signed by yourself?

Mr. R. Trotter.—Yes.

Mr. Morris.—Do you recollect having made any other payments in 1789, to the same houses, on account of the noble defendant?

Mr. R. Trotter.—I did, at least I see so from my books.

Mr. Morris.—Is that account signed by you?

Mr. R. Trotter.—It is.

Mr. Morris.—Does that enable you to state that you made these payments in 1789?

Mr. R. Trotter.—I have no doubt of it.

Mr. Morris.—What was the amount of those payments?

Mr. R. Trotter.—2,000*l.* to sir William Forbes and company, and 3,000*l.* to messieurs Mansfield and company.

Mr. Morris.—What is the date of those payments?

Mr. R. Trotter.—The 2,000*l.* to sir William Forbes and company, was paid upon the 14th of July, 1789 and the 3,000*l.* to messieurs Mansfield and company, upon the 17th of the same month and year.

Mr. Morris.—Did you also transmit receipts of those payments to your brother?

Mr. R. Trotter.—I do not believe I did at that time; but afterwards, upon settling accounts, the vouchers for those payments were delivered up. I see, by the bottom here, that my brother acknowledges having received all the vouchers of the last account.

Then Robert Trotter, esq. was cross-examined as follows:

Mr. Adam.—Whether you have any recollection of these circumstances, except from the entries in your books and the accounts you have seen?

Mr. R. Trotter.—I have not the least.

Mr. Adam.—Can you from any collateral circumstances, bring to your recollection these payments?

Mr. R. Trotter.—Only from the accounts and from the books.

Mr. Morris.—Is the account to which you refer, as refreshing your recollection, the signed account to which you before alluded?

Mr. R. Trotter.—It is.

[The witness was directed to withdraw.]

Then sir William Forbes, bart. was called in, and being sworn, was examined as follows:

Mr. Morris.—Are you a Banker at Edinburgh?

Sir William Forbes.—I am.

Mr. Morris.—Did lord Melville keep an account with you?

Sir William Forbes.—He did, and he does still.

Mr. Morris.—Was that account, in 1787, against the noble defendant?

Sir William Forbes.—It was.

Mr. Morris.—Is it the practice of your house, to charge with the payment of interest all sums overdrawn on account, by any person keeping money with your house?

Sir William Forbes.—It is.

Mr. Morris.—From that being the general usage of the house, do you believe that was the course with respect to lord Melville?

Sir William Forbes.—It was.

Mr. Morris.—Were the accounts of lord Melville with your house regularly transmitted to him?

Sir William Forbes.—Our general practice is to transmit the accounts at the end of the year; and lord Melville's accounts were sent—I will not positively say they were sent every year, sometimes they might be omitted; but, in general, our practice is always to send the accounts.

Mr. Morris.—Was any objection ever made by lord Melville to the sum of 2,000*l.* being charged over and above the sum received?

Sir William Forbes.—Not that I ever knew of, and I believe he made none.

Mr. Morris.—Was any objection ever taken as to the second thousand pound in 1789, as well as the two thousand in 1787?

Sir William Forbes.—No, not to my knowledge.

Then sir William Forbes was cross-examined as follows:

Mr. Adam.—Whether all the letters of your correspondence which you had with lord Melville, have not been transmitted to the managers---and how long ago?

Sir William Forbes.—In July last, we received a requisition, from the committee of the Impeachment, to transmit copies of the letters, and copies of the accounts that should relate to lord Melville's accounts, from the year 1784 to 1800. Those copies were all sent up to the managers at that period; there are many other letters which did not relate to those accounts, which of course we did not take any notice of.

Mr. Adam.—Have all the letters which relate to the accounts on both sides been transmitted?

Sir William Forbes.—I certainly believe that copies of them have.

Mr. Adam.—Either individually from you or from your house?

Sir William Forbes.—Yes.

Mr. Adam.—Have all the accounts, or copies of all the accounts, between you and lord Melville, during all the time his lordship has dealt with your house, been transmitted to the managers?



Sir William Forbes.—Only during the period included in the requisition, from 1782 to 1800; they have all been transmitted.

Mr. Adam.—Were those likewise transmitted in the month of July last?

Sir William Forbes.—Not all; the first requisition of the honourable managers went from 1784 to 1800.—we afterwards received a letter from Mr. Whitbread, wishing to have two years further back, stating that the committee had made a mistake; we wrote, that without a fresh order, we could not with propriety send them; when that order came, about a month ago, for us to send up the originals, we thought we could have no difficulty in sending up the copies of the two former years, and we did send them accordingly.

Mr. Adam.—Whether from your books or from your knowledge of the state of your account, it appears that lord Melville stood indebted, or otherwise, to the house, at that period?

Sir William Forbes.—My lord Melville has stood indebted to the house during the whole of that period.

Mr. Adam.—Has it been the custom of your house regularly to charge interest for that balance?

Sir William Forbes.—Constantly; I merely speak with the exception, in point of fact, of a trifling sum of money 19*l.* 7*s.* which I see allowed to lord Melville for money as in our hands; but I do not think that any exception scarcely to the general rule.

Mr. Adam.—Has money been advanced by you, during that period, to lord Melville upon his bond?

Sir William Forbes.—It has.

Mr. Adam.—Has his lordship had money advanced to him, upon the guarantee and security of any friends, since that time?

Sir William Forbes.—He has.

Mr. Adam.—Has he paid interest upon those loans?

Sir William Forbes.—Most certainly.

Mr. Adam.—Am I to understand that his lordship has paid interest during the whole period of those loans?

Sir William Forbes.—Yes, up to the first of January last—the interest is commonly paid once a year.

Mr. Adam.—Whether it is not customary, for bankers in Scotland to allow interest upon money left in their hands by their customers?

Sir William Forbes.—It is.

Mr. Adam.—How much do they allow?

Sir William Forbes.—Upon an account current they allow three per cent,—if it is lodged upon a note to lie six months it is generally four per cent.

Mr. Adam.—Whether you have at different times yourself personally, and your house likewise in their capacity of bankers, pressed lord Melville for the payment of the sums of money that were due to you?

Sir William Forbes.—Never myself, but our house did write to lord Melville, to say that

they should be very glad if it would be convenient for his lordship to reduce the balances, because they were at that time large.

A Lord.—For what length of time have you been a banker in Scotland?

Sir William Forbes.—Ever since the year 1761.

A Lord.—Has not your contract of co-partnership frequently expired?

Sir William Forbes.—Several times.

A Lord.—Upon those occasions is it the custom for your partners to execute mutual releases?

Sir William Forbes.—As our partnership has generally been continued under the same partners, sometimes with the exception of those who have died in the interval and new ones have come in—as the same partners generally continued on the firm of the house, we seldom have been so scrupulous as to execute releases except once when a partner died who left a minor son.

A Lord.—Did that release contain a clause obliging the partners to destroy vouchers?

Sir William Forbes.—No, I do not believe it did.

[The witness was directed to withdraw.]

Mr. Morris.—The next witness I shall have to call before your lordships, will be Mr. James Mansfield.

Then Mr. James Mansfield was called in, and being sworn, was examined as follows:

Mr. Morris.—I wish you to state to the Court whether you are not a banker at Edinburgh?

Mr. Mansfield.—I am.

Mr. Morris.—Had lord Melville any account with you?

Mr. Mansfield.—He had.

Mr. Morris.—In the year 1787, was not lord Melville indebted to your house?

Mr. Mansfield.—He was.

Mr. Morris.—Was any payment made into your house on account of lord Melville, in the year 1787, and to what amount?

Mr. Mansfield.—Upon the 23rd of July.

Mr. Plumer.—Are those books in your own hand-writing?

Mr. Mansfield.—They are not.

Mr. Morris.—Have you any doubt of the fact of that payment having been made?

Mr. Mansfield.—None.

Lord Chancellor.—By what means are you satisfied of the fact?

Mr. Mansfield.—By referring to our cash-book.

Mr. Morris.—Has any account been delivered to lord Melville, or the agents of lord Melville, of the state of his accounts with that house?

Mr. Mansfield.—There have been several delivered to his agents.

Mr. Morris.—Was any objection then taken to the accuracy of that account?

Mr. Mansfield.—None.



Mr. Morris.—Can you state the amount of the sum so paid in to the account of the noble lord?

Mr. Plumer.—Did the witness deliver the account himself to any agent of lord Melville?

Mr. Mansfield.—I did not.

Mr. Morris.—Is it the practice of your house to transmit such accounts to persons keeping money with you?

Mr. Mansfield.—It is.

Mr. Morris.—What was the state of lord Melville's account in the year 1787?

Mr. Plumer.—My lords, I submit, that at present the honourable managers are not in a situation to give any evidence on that subject.

Mr. Morris.—Was the noble lord indebted to your house at that time?

Mr. Mansfield.—He was.

Lord Chancellor.—How do you know that?

Mr. Mansfield.—By referring to our books.

Mr. Morris.—Is it the usage of your house to charge interest upon the sums that are overdrawn by your customers?

Mr. Mansfield.—It always is.

Mr. Morris.—Had lord Melville given any securities, which were then in the possession of your house, in respect of which he was liable to pay interest?

Mr. Mansfield.—No further at that time than a draft upon the house.

Mr. Morris.—Did the payment of those sums into the accounts operate to the reduction of the interest which was payable by lord Melville?

A Lord.—Without the production of those securities, or notice given to lord Melville, if he has them, to produce them, we cannot hear any thing about them?

Lord Chancellor.—Certainly not.

Mr. Morris.—I understood Mr. Trotter had proved the payment of the sum into the house of this gentleman.

Lord Chancellor.—As far as the payment of a specific sum is proved; but the state of the account cannot be proved by that book.

Mr. Morris.—The way in which I submit it to your lordship is this: inasmuch as it is the usual course of the house, to transmit an account of the state of their accounts, to persons dealing with the house, that your lordships would presume that the general usage was followed in this instance, and that therefore those accounts taken from the books, to which the witness has referred, become evidence, notice having been given to the noble lord to produce the original.

Mr. Plumer.—I admit the notice.

Lord Chancellor.—You have not proved in fact that any such accounts were transmitted to lord Melville: you are presuming that; if you had proved that the accounts had been evidence, Do you know that the accounts were transmitted to lord Melville?

Mr. Mansfield.—I do not know whether they were transmitted to his lordship.

Mr. Morris.—Do you know that they were transmitted to the agents of the noble lord?

Mr. Mansfield.—I certainly do.

Mr. Morris.—Who were the agents of the noble lord to whom those accounts were transmitted?

Mr. Mansfield.—Mr. James Newbigging, Mr. Robert Dundas, or Mr. Hugh Warrender.

Mr. Plumer.—Do you personally know that either of those persons whom you have named was the authorized agent of lord Melville?

Mr. Mansfield.—I understood them to be such.

Mr. Plumer.—Did they act in that capacity?

Mr. Mansfield.—They acted in that capacity.

Mr. Plumer.—Do you know of your own knowledge, of the transmission of the accounts to either of those three persons you have named, and to which of them—did you ever see them delivered to them?

Mr. Mansfield.—No.

Mr. Plumer.—Who carried them?

Mr. Mansfield.—One of our clerks.

Mr. Plumer.—Can you recollect who?

Mr. Mansfield.—It is impossible.

Mr. Morris.—Have you had any conversation with lord Melville, upon the subject of his accounts with your house?

Mr. Mansfield.—Never, to the best of my recollection.

Mr. Morris.—Are the books before you the books of your house?

Mr. Mansfield.—They are.

Mr. Morris.—Can you, by referring to those books, speak of your own knowledge to the state of the accounts?

Lord Chancellor.—They are not his own hand-writing, and it is impossible he can speak of his own knowledge to the transaction. Unless a copy of that account had been sent to lord Melville, and notice had been given to him to produce that account so rendered to him, it is impossible to make this evidence.

Mr. Morris.—Does not your lordship think the witness might refer to a particular item in that book, in order to see what was the amount of the sum upon which interest was charged?

Lord Chancellor.—I think not.

Mr. Morris.—Was any security ever given by the noble lord for the balance resulting from that account?

Mr. Mansfield.—Yes, there was.

Lord Chancellor.—Do you know that fact?

Mr. Mansfield.—Yes, I do.

Mr. Morris.—What was the nature of that security?

Lord Chancellor.—What is become of that security?

Mr. Mansfield.—The security was royal bank stock.

Lord Chancellor.—What is become of it? does that security still remain with your house?

Mr. Mansfield.—No, the accounts were closed several years ago.

Mr. Morris.—Do you know, of your own



knowledge, to whom that security was delivered?

Mr. Mansfield.—It was transferred back to his lordship.

Mr. Morris.—Do you know that fact of your own knowledge?

Mr. Mansfield.—Yes, I do.

Lord Chancellor.—How do you know that fact?

Mr. Mansfield.—From our books.

Lord Chancellor.—Do you know it from your own knowledge, or from any entry in your own hand-writing?

Mr. Mansfield.—Not from my own hand-writing. I know nothing of it except from my books.

A Lord.—I apprehend that a transfer of royal bank stock must be proved by the books of the company.

Lord Chancellor.—Certainly.

Mr. Morris.—Was that account ever settled between your house and my lord Melville to your knowledge?

Mr. Plumer.—I submit to your lordships that the existence of an account has not been proved.

Mr. Morris.—There is an account proved, inasmuch as there is a sum of money proved to have been paid in to the account. Has lord Melville at any time settled an account with you?

Mr. Mansfield.—Yes, he has.

Mr. Morris.—Was that account, so settled, made up from the books before you?

Mr. Plumer.—This gentleman, I dare say, unguardedly has answered questions, in several instances, where he does not speak from his own personal knowledge. I wish to know whether the settlement of an account with lord Melville is known to the witness of his own knowledge.

Lord Chancellor.—Did you settle any account personally with lord Melville, so as to be able to swear to the fact?

Mr. Mansfield.—I certainly did not.

Mr. Morris.—Did you settle it with an agent of lord Melville?

Mr. Mansfield.—I did not.

Mr. Morris.—On what ground did you state, a few minutes ago, that you knew lord Melville had settled the account?

Mr. Mansfield.—From vouchers that I had seen, signed by lord Melville.

Lord Chancellor.—Where are the vouchers?

Mr. Mansfield.—They are in our repositories.

Mr. Morris.—It will ill become the managers to press this part of the case any further, till we can get the vouchers.

Lord Chancellor.—The rules of evidence are so perfectly clear upon this subject, that I am persuaded the managers know better than to press it.

Mr. Whitbread.—With regard to a certain advance that was made by the house of Coutts and company, through the agency of Mr. Ro-

bert Trotter, to the amount, altogether, of the sum of 25,000*l.* a circumstance that has been stated to your lordships, and spoken of by Mr. Trotter as having been an advance made by him out of public money to a respectable house in Scotland, at interest, for a considerable time; I would beg to ask one question of this witness. Do you, of your own personal knowledge, know that there was any such advance made to that amount from the house of Coutts and company?

Mr. Mansfield.—Yes.

Mr. Morris.—Do you recollect about what time that advance took place?

Mr. Plumer.—What paper is that you are about to refer to?

Mr. Mansfield.—It is a copy of an account kept by Robert Trotter with the house of Mansfield, Ramsay and co.

Mr. Whitbread.—Is that a copy examined by yourself?

Mr. Mansfield.—It is.

Mr. Morris.—Do you know about what time that advance from the house of Coutts and company took place?

Lord Chancellor.—Do you know, of your own personal knowledge, that there was an advance from the house of Coutts and company to the house of Mansfield, Ramsay, and company, of 25,000*l.*, without referring to that paper?

Mr. Mansfield.—I recollect perfectly well Mr. Robert Trotter being in London, and writing to us to draw upon him for a certain sum of money which we did draw, payable to Coutts and Company, that amounted, at different times, to 25,000*l.*

Mr. Plumer.—The gentleman is telling us the contents of a letter, written by a person in London, this gentleman being then in Scotland.

Mr. Whitbread.—We have the original letter to put in, addressed to the house of Mansfield, Ramsay, and Company. Mr. Robert Trotter will prove it.

[The witness was directed to withdraw.]

Then Robert Trotter, esquire, was again called in, and examined as follows:

Mr. Morris.—Is that letter in your own hand-writing?

Mr. R. Trotter.—It is.

Mr. Morris.—From that letter do you collect that you directed the house of Mansfield, Ramsay, and Company, to draw upon Coutts' for 10,000*l.*?

Mr. R. Trotter.—I did.

Mr. Morris.—What is the date of that letter?

Mr. R. Trotter.—The 15th of August, 1787.

Mr. Morris.—Look at this letter; is this your own hand-writing?

Mr. R. Trotter.—It is.

Mr. Morris.—Does that enable you to say, that you gave directions to Mansfield and Company to draw for another sum of 10,000*l.*?



Mr. R. Trotter.—It does.

Mr. Morris.—Did you give further directions to the house of Mansfield and Company, to draw for a further sum of 5,000*l*.?

Mr. R. Trotter.—I remember giving directions to draw for those two ten thousands, and for five thousand more.

Mr. Morris.—Upon whose account was that money paid by the house of Coutts and Company?

Mr. R. Trotter.—My brother Alexander's account.

Then Robert Trotter, esquire, was cross-examined as follows:

Mr. Plumer.—I observe some documents have been put into the witness's hand,—when did you part with those letters?

Mr. R. Trotter.—About two months ago.

Mr. Plumer.—To whom?

Mr. R. Trotter.—The committee of managers on lord Melville's impeachment.

Mr. Plumer.—Have all your papers been delivered to the committee of managers too?

Mr. R. Trotter.—Yes.

Mr. Plumer.—Have they ever since remained in their possession?

Mr. R. Trotter.—That is, all accounts and letters from the year 1786 to 1800.

Mr. Plumer.—All your private letters and papers relative to the accounts?

Mr. R. Trotter.—Yes, they were all delivered over to the committee, and they kept a great number of them; others they returned back.

Mr. Whitbread.—Whether the committee did not inspect your letters, and deliver back such as appeared to you not to relate to the accounts?

Mr. R. Trotter.—Yes, and gave a receipt for what they kept.

Mr. Plumer.—What means of knowledge have you of the fact of the actual payment by Coutts and Company, to Mansfield and Company, of those sums you spoke of?

Mr. R. Trotter.—I never heard more of it than afterwards, when Mansfield's house gave me credit for those sums.

Mr. Plumer.—Have you any other knowledge of that fact, than its being contained in an account subsequently rendered?

Mr. R. Trotter.—Yes, I remember the transaction perfectly well.

Mr. Plumer.—Did you see the money paid?

Mr. R. Trotter.—No, I know no further than getting credit from Mr. Mansfield's house for that money.

A Lord.—I wish that the books which have been given in evidence may be delivered in.

Adjourned to the Chamber of Parliament.

#### THE EIGHTH DAY.

Thursday, May 8, 1806.

The Lords and others came from the  
§

Chamber of Parliament into Westminster-hall, in the same order as on the first day of the trial.

Lord Chancellor. — Gentlemen, Managers for the Commons, you may now proceed with your evidence, and the lords will be pleased to give their attention.

Mr. Morris.—My lords, in the examination on Tuesday last, it was in evidence before your lordships, that two sums of money were paid on account of the noble defendant, into the hands of sir William Forbes and Company, bankers, at Edinburgh; it was proved before your lordships, that the account of the noble lord with that banking-house was overdrawn, that it was the practice of that house to charge with interest the accounts of persons keeping cash with the house, whenever the accounts of those persons were overdrawn; with respect to the other part of the case, the payment of money into the banking-house of Mansfield and Company, it was in evidence before your lordships, that two sums were paid into the hands of those bankers, on account of the noble lord; and that it was the practice of that house to charge interest, in respect of sums overdrawn by persons keeping cash with them. But, my lords, the managers for the Commons were not in a condition to lay before your lordships evidence of the state of the account of the noble lord with that house. Mr. Mansfield, who was the witness, from whom the managers for the Commons expected to derive that testimony, could not speak to his own knowledge of the delivery of that account to the noble lord, or to his agents. My lords, we expect that we shall be in a condition to lay satisfactory evidence, upon that subject, before your lordships; but if we are not, that part of the case will rest upon the evidence which is already in your lordships' possession; namely, as to the fact of those sums of money having been paid by the direction of Mr. Alexander Trotter, into the house of Mansfield and Company; which house, it is in evidence before your lordship's was the private banking-house of the noble lord.

My lords, there was another sum stated to your lordships in evidence, the sum of 25,000*l*. as paid by Mr. Robert Trotter, the brother of Mr. Alexander Trotter, into the house of Mansfield and Company, on account of Mr. Alexander Trotter.—I shall now call Mr. Robert Trotter, who will prove that he received, on account of his brother, interest at the rate of four per cent upon that sum of 25,000*l*.—that the amount of the sum which he so received as interest, was credited by him in account with his brother; and that his brother, Mr. Alexander Trotter, had all the advantage resulting from that interest so allowed.

Then Robert Trotter, esquire, was again called in, and examined as follows:

Mr. Morris.—Look at that account, and



state to the Court whether that account is signed in your own hand-writing?

Mr. R. Trotter.—It is.

Mr. Morris.—Refreshing your memory by that account you now hold in your hand, are you able to state to the Court that interest was received by you on account of that sum of 25,000*l.*?

Mr. R. Trotter.—I know it was, my lords.

Mr. Morris.—What is the account which you have in your hand, and by whom is it signed?

Mr. R. Trotter.—It is an account between my brother and myself, wherein I give him credit for interest 802*l.* and for 1,164*l.* 10*s.* 4*d.*

Mr. Morris.—For interest upon what sums?

Mr. R. Trotter.—There was one sum of 10,000*l.* another sum of 10,000*l.* and a sum of 5,000*l.* that was the whole interest I ever received upon those sums, and it was for two years.

Mr. Morris.—Had Mr. Alexander Trotter credit for those sums?

Mr. R. Trotter.—Yes, he had in this very account.

Then Robert Trotter, esquire, was cross-examined as follows:

Mr. Adam.—Were those sums of money received upon your brother's account alone?

Mr. R. Trotter.—I received the whole of them through the hands of Mr. Mansfield upon Mr. Coutts.

Mr. Adam.—Was it for your brother alone?

Mr. R. Trotter.—It was for my brother alone.

A Lord.—You have stated that you received those different sums of 802*l.* and 1,164*l.* 10*s.* 4*d.* for two years; fix the dates?

Mr. R. Trotter.—I will read, with your lordships' permission, the article which will tell precisely the day.

Then the paper was delivered in, and is as follows:



Dr. ALEXANDER TROTTER, Esquire, London, in Account Current (No. 1.) with ROBERT TROTTER, Edinburgh. Cr.

| 1788.                                                                                                                                                                                                                                                                                                                                                                                                                 | £.     | s. | d. | 1787.                                                                                                                                                                                                                                                                                        | £.     | s. | d. |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------|----|----|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------|----|----|
| Sep. 30. To two following remittances sent this night, viz.<br>1. Sir William Forbes and Co. on Moffat, Kensington,<br>and B. at 40 d-d.....<br>2. Thomas Kinnear and Son's bill on Smith, Payne,<br>and Smith, at 40 d-d.....                                                                                                                                                                                        |        |    |    | Aug. 18. By Mansfield, Ramsay, and Co's. bill this day upon Thomas<br>Coutts, Esq. and Co. paid by them on your account.....<br>Exchange allowed by Messrs. Mansfield and Co.....                                                                                                            | 10,000 | 0  | 0  |
|                                                                                                                                                                                                                                                                                                                                                                                                                       |        |    |    |                                                                                                                                                                                                                                                                                              | 25     | 0  | 0  |
|                                                                                                                                                                                                                                                                                                                                                                                                                       |        |    |    |                                                                                                                                                                                                                                                                                              | 10,025 | 0  | 0  |
| 1789.                                                                                                                                                                                                                                                                                                                                                                                                                 |        |    |    |                                                                                                                                                                                                                                                                                              |        |    |    |
| Sep. 25. To sum placed by Messrs. Mansfield, Ramsay, and Co. of<br>Edinburgh to the credit of Thomas Coutts Esq. and Co. of<br>London, in the accounts betwixt them as per my account<br>with Messrs. Mansfield and Co. settled this day, and which<br>sum Messrs. Coutts and Co. were to pass to your own<br>credit in your account with them; and all which was done<br>in consequence of your own directions ..... |        |    |    | Sep. 3. By ditto's bill this day upon Messrs. Coutts and Co. at sight,<br>and paid by them on your account ..... £. 10,000 0 0<br>Exchange as above..... 25 0 0                                                                                                                              | 10,025 | 0  | 0  |
|                                                                                                                                                                                                                                                                                                                                                                                                                       |        |    |    |                                                                                                                                                                                                                                                                                              |        |    |    |
| Nov. 9. To my bill on Messrs. Coutts and Co. at sight to your order<br>remitted you this night .....                                                                                                                                                                                                                                                                                                                  | 25,000 | 0  | 0  |                                                                                                                                                                                                                                                                                              |        |    |    |
|                                                                                                                                                                                                                                                                                                                                                                                                                       |        |    |    |                                                                                                                                                                                                                                                                                              |        |    |    |
| Dec. 26. To sum carried to your credit in our account-current (No. 3.),<br>and which being the balance due on this account, com-<br>pletely settles and discharges the same .....                                                                                                                                                                                                                                     | 827    | 0  | 0  | 1788.<br>April 3. By cash received from you in order to be lent to Messrs.<br>Mansfield and Co. as above ..... £. 5,000 0 0<br>Exchange as above..... 12 10 0                                                                                                                                | 5,012  | 10 | 0  |
|                                                                                                                                                                                                                                                                                                                                                                                                                       |        |    |    |                                                                                                                                                                                                                                                                                              |        |    |    |
|                                                                                                                                                                                                                                                                                                                                                                                                                       |        |    |    | Sep. 30. By one year's interest at 4 per cent. received from Messrs.<br>Mansfield and Co. on the above sum of £ 10,025 due 18th<br>August 1788 ..... £. 401 0 0<br>Ditto on the other sum of £. 10,025 due 3rd<br>Sept. 1788 ..... 401 0 0                                                   | 802    | 0  | 0  |
|                                                                                                                                                                                                                                                                                                                                                                                                                       |        |    |    | 1789.<br>Sep. 25. By Interest at 4 per cent. received this day from Messrs.<br>Mansfield and Co. as per account settled with them this<br>day, viz.<br>From 18th August 1788 on ..... £. 10,025 0 0<br>From 3rd September 1788 on ..... 10,025 0 0<br>From 3rd April 1788 on..... 5,012 10 0 | 1,164  | 10 | 4  |
|                                                                                                                                                                                                                                                                                                                                                                                                                       |        |    |    |                                                                                                                                                                                                                                                                                              |        |    |    |
|                                                                                                                                                                                                                                                                                                                                                                                                                       |        |    |    |                                                                                                                                                                                                                                                                                              | 27,029 | 0  | 4  |

I hereby acknowledge this account to be finally settled as above.

ALEX. TROTTER.

Edinburgh, 26th December, 1789.

Errors excepted,

5th January, 1790.

Ro. TROTTER.



Mr. *Whitbread*.—My Lords, the Commons now propose to proceed to corroborate the testimony given by Mr. Alexander Trotter, with regard to various transactions charged in their articles: I mean, with respect to the second part of the case, to corroborate the statements which have been made with regard to the account current, with regard to the Chest Account, and with regard to the money placed at Messieurs Coutts', with the connivance of lord Melville, with regard to the insecurity of the monies so placed, and with regard to the facilities of the office.—The Commons propose now to call Mr. Edmund Antrobus, a partner in the house of Messrs. Coutts.

Then *Edmund Antrobus*, esq. was called in, and being sworn, was examined as follows:

Mr. *Whitbread*.—Are you a partner in the house of Messieurs Coutts?

Mr. *E. Antrobus*.—I am.

Mr. *Whitbread*.—How long have you been a partner in that house?

Mr. *E. Antrobus*.—Very near thirty years.

Mr. *Whitbread*.—Are you generally acquainted with all the transactions of that house, with regard to their customers?

Mr. *E. Antrobus*.—I am.

Mr. *Whitbread*.—Do you know that Mr. Alexander Trotter has been for a considerable length of time a customer of that house?

Mr. *E. Antrobus*.—I do know it.

Mr. *Whitbread*.—How many accounts has Mr. Alexander Trotter, or has he had with the house, opened under separate heads, from the commencement of his accounts?

Mr. *E. Antrobus*.—As far as I recollect at this moment, he had five.

Mr. *Whitbread*.—What accounts had he?

Mr. *E. Antrobus*.—He had one in his own name without any other designation—he had

one called his separate account, another his private account, and one in his own name, in trust for Adam Jellicoe.

Mr. *Whitbread*.—Was there not also a paymaster's account?

Mr. *E. Antrobus*.—And there was also an account in his name as paymaster.

Mr. *Whitbread*.—Was it the custom of the house of Messieurs Coutts that their accounts should be signed by their customers in their books?

Mr. *E. Antrobus*.—It is very frequently done, but it is not necessarily so.

Mr. *Whitbread*.—Did Mr. Alexander Trotter sign his accounts in the books?

Mr. *E. Antrobus*.—He has signed some of them; I do not think he has signed the whole of them.

Mr. *Whitbread*.—Had lord Melville an account opened at the house of Messieurs Coutts?

Mr. *E. Antrobus*.—He had.

Mr. *Whitbread*.—Has a copy of that account been delivered to lord Melville?

Mr. *E. Antrobus*.—A copy of that account has been transmitted to his lordship.

Mr. *Whitbread*.—Has that account been signed by lord Melville?

Mr. *E. Antrobus*.—The account was transmitted to his lordship with a duplicate, the duplicate of which he returned, signed.

Mr. *Whitbread*.—Is that the duplicate now in your hand?

Mr. *E. Antrobus*.—This is the duplicate of the account—it is I believe signed by lord Melville, but I never saw his lordship sign his name.

Mr. *Plumer*.—I admit the signature to be lord Melville's hand-writing.

Then the paper was delivered in, and is as follows:



Dr. The Right Honorable Henry Dundas . . with . . Messrs. Thomas Coutts and Co. : . Cr.

| 1787.    |                                                                                                                      | £.    | s. | d. | 1787.    |                                                                                                                                                                                                                                                               | £.    | s. | d. |
|----------|----------------------------------------------------------------------------------------------------------------------|-------|----|----|----------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------|----|----|
| Mar. 22  | To cash paid George Hogg                                                                                             | 500   | 0  | 0  | Mar. 21  | By cash received of Alexander Trotter Esquire, per receipt                                                                                                                                                                                                    | 1,700 | 0  | 0  |
| April 13 | To ditto                                                                                                             | 500   | 0  | 0  | May 21   | By ditto.....per ditto                                                                                                                                                                                                                                        | 1,000 | 0  | 0  |
| 20       | To bearer.....                                                                                                       | 350   | 0  | 0  | July 20  | By ditto.....per ditto                                                                                                                                                                                                                                        | 2,126 | 0  | 0  |
| May 17   | To W. Bell's bill.....                                                                                               | 156   | 0  | 0  | Aug. 3   | By ditto                                                                                                                                                                                                                                                      | 53    | 10 | 6  |
| 31       | To bearer...                                                                                                         | 100   | 0  | 0  |          |                                                                                                                                                                                                                                                               |       |    |    |
| June 13  | To ditto                                                                                                             | 500   | 0  | 0  | 1795.    |                                                                                                                                                                                                                                                               |       |    |    |
| 14       | To ditto                                                                                                             | 220   | 0  | 0  | Feb. 2   | By ditto                                                                                                                                                                                                                                                      | 4,000 | 0  | 0  |
| July 7   | To George Hogg                                                                                                       | 500   | 0  | 0  |          |                                                                                                                                                                                                                                                               |       |    |    |
| 28       | To yourself                                                                                                          | 2,039 | 0  | 0  | 1796.    |                                                                                                                                                                                                                                                               |       |    |    |
| Aug. 6   | To ditto                                                                                                             | 120   | 0  | 0  | Feb. 2   | By ditto ..... per receipt                                                                                                                                                                                                                                    | 431   | 9  | 6  |
| 20       | To bearer.....                                                                                                       | 50    | 0  | 0  | 9        | By ditto                                                                                                                                                                                                                                                      | 1,183 | 3  | 11 |
| Oct. 9   | To Alexander Trotter                                                                                                 | 40    | 0  | 0  | 11       | By W. Simpson on the Bank, remitted by R. Dundas.....                                                                                                                                                                                                         | 500   | 0  | 0  |
| 1795.    |                                                                                                                      |       |    |    | June 28  | By Hugh Warrender Esqr's. account                                                                                                                                                                                                                             | 200   | 0  | 0  |
| Feb. 3   | To £.2,178 7 0 India Stock a 183½ per cent                                                                           |       |    |    | July 9   | By W. Simpson on the Bank, remitted by H. Warrender                                                                                                                                                                                                           | 988   | 1  | 2  |
|          | £.3,997 5 5                                                                                                          |       |    |    | Oct.     | By Alexander Trotter Esquire's account                                                                                                                                                                                                                        | 1,000 | 0  | 0  |
|          | Brokerage .....2 14 7                                                                                                |       |    |    | Dec. 31  | By ditto                                                                                                                                                                                                                                                      | 1,000 | 0  | 0  |
| 1796.    |                                                                                                                      | 4,000 | 0  | 0  | 1797.    |                                                                                                                                                                                                                                                               |       |    |    |
| Jan. 30  | To bearer                                                                                                            | 50    | 0  | 0  | Jan. 7   | By £.1750 7 3 consolidated 3 per cents (produce of Navy bills) from our name at 56 per cent                                                                                                                                                                   |       |    |    |
| Feb. 2   | To ditto                                                                                                             | 431   | 9  | 6  |          | £.980 4 1                                                                                                                                                                                                                                                     |       |    |    |
| 3        | To W. Bell's bill                                                                                                    | 130   | 0  | 0  |          | Private transfer                                                                                                                                                                                                                                              |       |    |    |
| —        | To ditto                                                                                                             | 130   | 0  | 0  |          | 2s. 6d.                                                                                                                                                                                                                                                       |       |    |    |
| —        | To Katherine Gray's bill                                                                                             | 96    | 0  | 0  |          | Brokerage                                                                                                                                                                                                                                                     |       |    |    |
| 8        | To bearer.....                                                                                                       | 300   | 0  | 0  |          | £.2 3s. 9d. ....                                                                                                                                                                                                                                              | 2     | 6  | 3  |
| —        | To ditto                                                                                                             | 332   | 10 | 0  |          |                                                                                                                                                                                                                                                               | 977   | 17 | 10 |
| —        | To ditto                                                                                                             | 100   | 0  | 0  | 14       | By cash received of Alexander Trotter Esquire, per receipt                                                                                                                                                                                                    | 1,000 | 0  | 0  |
| 13       | To W. Bell's bill.....                                                                                               | 130   | 0  | 0  |          | By particulars of a Navy Bill funded in consolidated 3 per cents viz. No. 80. dated 19th October 1796, £.1,000 and interest £.1,006 9 3 producing at the rate of £.173 18 3 consolidated 3 per cents for each £.100 sterling, £.1,750 7 3 Consols 3 per cents |       |    |    |
| Mar. 14  | To Lady Jane Dundas.....                                                                                             | 150   | 0  | 0  | 23       | By 6 months dividend to 5th instant on £.1,750 7 3 Consol 3 per cents arising from Navy Bills funded                                                                                                                                                          | 26    | 5  | 1  |
| 29       | To bearer.....                                                                                                       | 125   | 0  | 0  | April 25 | By Alexander Trotter Esqr's. account                                                                                                                                                                                                                          | 2,000 | 0  | 0  |
| April 5  | To ditto                                                                                                             | 167   | 0  | 0  | June 7   | By ditto ..... ditto                                                                                                                                                                                                                                          | 1,000 | 0  | 0  |
| May 23   | To ditto                                                                                                             | 100   | 0  | 0  | July 29  | By ditto ..... ditto                                                                                                                                                                                                                                          | 1,500 | 0  | 0  |
| —        | To ditto                                                                                                             | 339   | 0  | 0  | Aug. 21  | By James Chapman per receipt.....                                                                                                                                                                                                                             | 500   | 0  | 0  |
| June 4   | To ditto                                                                                                             | 200   | 0  | 0  | Sept. 1  | By Alexander Trotter Esq.                                                                                                                                                                                                                                     | 1,500 | 0  | 0  |
| July 7   | To M. Bridges half year's rent of a house at Wimbledon Common, due at Lady Day last, from Lady Haddo to John Walford | 31    | 10 | 0  |          |                                                                                                                                                                                                                                                               |       |    |    |
| 9        | To 35 days interest on £.988 1 2 discounted, and on the overdrafts of your account to this day                       | 8     | 18 | 10 |          |                                                                                                                                                                                                                                                               |       |    |    |
| 12       | To bearer.....                                                                                                       | 480   | 0  | 0  |          |                                                                                                                                                                                                                                                               |       |    |    |
| 13       | To W. Bell's bill.....                                                                                               | 60    | 0  | 0  |          |                                                                                                                                                                                                                                                               |       |    |    |
| Oct. 21  | To a Navy bill No. 80, dated 19th October 1796, £.1,000 interest 2 days                                              | 4     | 4  |    |          |                                                                                                                                                                                                                                                               |       |    |    |
|          | Discount 8½ £.85.915 0 0                                                                                             |       |    |    |          |                                                                                                                                                                                                                                                               |       |    |    |
|          |                                                                                                                      | 915   | 4  | 4  |          |                                                                                                                                                                                                                                                               |       |    |    |
|          | Brokerage ...                                                                                                        | 1     | 5  | 0  |          |                                                                                                                                                                                                                                                               |       |    |    |
|          |                                                                                                                      | 916   | 9  | 4  |          |                                                                                                                                                                                                                                                               |       |    |    |
| Dec. 20  | To bearer.....                                                                                                       | 16    | 0  | 0  |          |                                                                                                                                                                                                                                                               |       |    |    |
| 29       | To ditto                                                                                                             | 100   | 0  | 0  |          |                                                                                                                                                                                                                                                               |       |    |    |
| 1797.    |                                                                                                                      |       |    |    |          |                                                                                                                                                                                                                                                               |       |    |    |
| Jan. 12  | To ditto                                                                                                             | 474   | 0  | 0  |          |                                                                                                                                                                                                                                                               |       |    |    |
| 13       | To ditto                                                                                                             | 500   | 0  | 0  |          |                                                                                                                                                                                                                                                               |       |    |    |
| —        | To 1st payment of 10 per cent on £.10,000 new Loan.....                                                              | 1,000 | 0  | 0  |          |                                                                                                                                                                                                                                                               |       |    |    |
| 14       | To cash paid bearer                                                                                                  | 300   | 0  | 0  |          |                                                                                                                                                                                                                                                               |       |    |    |
| 27       | To ditto                                                                                                             | 214   | 0  | 0  |          |                                                                                                                                                                                                                                                               |       |    |    |
| Feb. 9   | To ditto                                                                                                             | 100   | 0  | 0  |          |                                                                                                                                                                                                                                                               |       |    |    |
| 21       | To ditto                                                                                                             | 100   | 0  | 0  |          |                                                                                                                                                                                                                                                               |       |    |    |



Dr. The Right Honorable Henry Dundas . . with . . Messrs. Thomas Coutts and Co. . . Cr.

| 1797.    |                                                                                               | £.    | s. | d. |          |                                                                                       | £.     | s. | d. |
|----------|-----------------------------------------------------------------------------------------------|-------|----|----|----------|---------------------------------------------------------------------------------------|--------|----|----|
| Mar. 14  | To cash paid bearer .....                                                                     | 68    | 0  | 0  |          |                                                                                       |        |    |    |
| 17       | To 2nd payment 10 per cent on £.10,000 new Loan.....                                          | 1,000 | 0  | 0  |          |                                                                                       |        |    |    |
| April 21 | To 3rd ditto on ditto .....                                                                   | 1,000 | 0  | 0  |          |                                                                                       |        |    |    |
| May 2    | To bearer.....                                                                                | 130   | 0  | 0  |          |                                                                                       |        |    |    |
| June 2   | To 4th payment 10 per cent on £.10,000 new Loan.....                                          | 1,000 | 0  | 0  |          |                                                                                       |        |    |    |
| July 17  | To bearer.....                                                                                | 20    | 0  | 0  |          |                                                                                       |        |    |    |
| 21       | To 5th payment of 10 per cent on £.10,000 new Loan.....                                       | 1,500 | 0  | 0  |          |                                                                                       |        |    |    |
| Aug. 25  | To 6 ditto on ditto .....                                                                     | 1,500 | 0  | 0  |          |                                                                                       |        |    |    |
| Sept. 2  | To bearer.....                                                                                | 250   | 0  | 0  | 1797.    |                                                                                       |        |    |    |
|          | To a power of attorney for acceptance dividends, and sale of India Stock                      | 0     | 11 | 6  | Sept. 27 | By Alexander Trotter Esq.                                                             | 3,000  | 0  | 0  |
|          | To a ditto ..... for ditto of Consolidated 3 per cent .....                                   | 0     | 11 | 6  | Nov. 11  | By Alexander Trotter Esq. account .....                                               | 689    | 0  | 1  |
|          | To a ditto ..... for ditto of Reduced 3 per cent .....                                        | 0     | 11 | 6  | 1798.    |                                                                                       |        |    |    |
|          | To a ditto ..... for ditto of 5 per cent 1797 .....                                           | 0     | 11 | 6  | Feb. 16  | By received.....                                                                      | 1,000  | 0  | 0  |
|          | To the full payment on £.10,000 Loyalty loan                                                  |       |    |    | April 4  | By Alexander Trotter Esq.                                                             | 500    | 0  | 0  |
|          | £ 3,000 0 0                                                                                   |       |    |    | June 26  | By James Chapman per receipt .....                                                    | 500    | 0  | 0  |
|          | Discount 8 7 8                                                                                |       |    |    | Nov. 28  | By ditto .....                                                                        | 500    | 0  | 0  |
|          |                                                                                               | 2,991 | 12 | 4  | Dec. 15  | By ditto .....                                                                        | 429    | 18 | 0  |
| Oct. 7   | To Mr. Alves .....                                                                            | 250   | 0  | 0  | 1799.    |                                                                                       |        |    |    |
| Nov. 14  | To ditto .....                                                                                | 705   | 0  | 0  | Feb. 11  | By ditto .....                                                                        | 500    | 0  | 0  |
| 1798.    |                                                                                               |       |    |    | April 4  | By Alexander Trotter Esq.                                                             | 1,000  | 0  | 0  |
| Feb. 17  | To Thomas Wilson.....                                                                         | 1,000 | 0  | 0  | May 14   | By Mayne and Co. on Browne and Co. ....                                               | 3,207  | 10 | 2  |
| April 4  | To bearer... ..                                                                               | 500   | 0  | 0  | Oct. 18  | By James Chapman per receipt .....                                                    | 500    | 0  | 0  |
| July 2   | To ditto .....                                                                                | 180   | 0  | 0  | Dec. 5   | By ditto .....                                                                        | 200    | 0  | 0  |
| Aug. 20  | To Mr. Alves .....                                                                            | 50    | 0  | 0  | 1800.    |                                                                                       |        |    |    |
| Sept. 4  | To Forbes and Co. ....                                                                        | 150   | 0  | 0  | May 21   | By cash received of Mark Sprot, Esquire, the produce of £.11,250 0 0 New 5 per Cents. |        |    |    |
| Oct. 22  | To ditto .....                                                                                | 30    | 0  | 0  |          | £.10,757 16 3                                                                         |        |    |    |
| Dec. 4   | To John Walney.. ..                                                                           | 500   | 0  | 0  |          | £.8,433 14 11                                                                         |        |    |    |
| 1799.    |                                                                                               |       |    |    |          | Reduced £.5,313 5 2                                                                   |        |    |    |
| Jan. 15  | To H. S. Alves .....                                                                          | 250   | 0  | 0  |          | £.3,566 5 1                                                                           |        |    |    |
| 29       | To Lady Jane Dundas.....                                                                      | 100   | 0  | 0  |          | Consols... £.2,282 8 0                                                                |        |    |    |
| Feb. 19  | To H. S. Alves .....                                                                          | 250   | 0  | 0  |          | £.1,000 0 0                                                                           |        |    |    |
| 23       | To ditto .....                                                                                | 150   | 0  | 0  |          | India Stock £.2,098 15 0                                                              |        |    |    |
| April 6  | To ditto .....                                                                                | 200   | 0  | 0  |          |                                                                                       | 20,452 | 4  | 5  |
| 9        | To ditto .....                                                                                | 220   | 0  | 0  |          | (Sold by Mr. Sprot and transferred by us.)                                            |        |    |    |
| 15       | To bearer.....                                                                                | 5     | 11 | 6  | 22       | By value of your and Mr. Robert Dundas's bond and security of this date               | 13,000 | 0  | 0  |
| —        | To ditto .....                                                                                | 64    | 13 | 6  | June 26  | By James Chapman per receipt .....                                                    | 500    | 0  | 0  |
| 16       | To ditto .....                                                                                | 9     | 9  | 0  | Sept. 5  | By Forbes and Co. on Moffat and Co. remitted by Robert Dundas .....                   | 259    | 4  | 0  |
| 27       | To ditto .....                                                                                | 20    | 14 | 6  | 23       | By Robert Dundas on Child and Co. remitted by ditto.                                  | 375    | 0  | 0  |
| —        | To ditto .....                                                                                | 50    | 0  | 0  | Nov. 18  | By ditto ditto ditto .....                                                            | 250    | 0  | 0  |
| 18       | To ditto .....                                                                                | 12    | 9  | 3  | Dec. 6   | By Forbes and Co. on Moffat and Co. ditto ...                                         | 692    | 3  | 0  |
| 19       | To ditto .....                                                                                | 8     | 8  | 0  | 1801.    |                                                                                       |        |    |    |
| —        | To ditto .....                                                                                | 38    | 0  | 8  | March 7  | By ditto ditto ditto .....                                                            | 692    | 3  | 0  |
| 22       | To ditto .....                                                                                | 70    | 0  | 0  | 25       | By Robert Dundas Esq. per receipt .....                                               | 500    | 0  | 0  |
| 24       | To H. S. Alves.....                                                                           | 100   | 0  | 0  |          |                                                                                       |        |    |    |
| May 15   | To the Bank, the annual voluntary contribution of the auxiliary army serving in Portugal..... | 3,207 | 10 | 2  |          |                                                                                       |        |    |    |
| 16       | To bearer.....                                                                                | 370   | 0  | 0  |          |                                                                                       |        |    |    |
| July 16  | To ditto .....                                                                                | 75    | 0  | 0  |          |                                                                                       |        |    |    |
| Oct. 23  | To H. S. Alves.....                                                                           | 75    | 0  | 0  |          |                                                                                       |        |    |    |
| Dec. 12  | To yourself .....                                                                             | 100   | 0  | 0  |          |                                                                                       |        |    |    |
| 28       | To John M. Meheux .....                                                                       | 250   | 0  | 0  |          |                                                                                       |        |    |    |







Dr. The Right Honorable Henry Dundas . . with . . Messrs. Thomas Coutts and Co. . . Cr.

| 1803.    |                                                                                                                                                                                                               | £.    | s. | d. |         |                                                                           | £.     | s. | d. |
|----------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------|----|----|---------|---------------------------------------------------------------------------|--------|----|----|
| Mar. 28  | To cash, paid interest on £.11,500 from 21st May to 14th September 1802, and on £.10,750 remaining of yours and the Honorable Robert Dundas's bond and security, from 14th Sep. to this day ..... £.469 17 10 |       |    |    | Dec. 29 | By balance of your account as the Right Hon. Henry Dundas.....            | 227    | 14 | 7  |
|          | In further part of the principal.....6,350 0 0                                                                                                                                                                |       |    |    | 1803.   |                                                                           |        |    |    |
|          |                                                                                                                                                                                                               | 6,819 | 17 | 10 | Mar. 28 | By cash received of Greene and Tennant per receipt                        | 6,800  | 0  | 0  |
| May 25   | To a transfer of India stock from the Honorable Robert Dundas's name ...                                                                                                                                      | 1     | 6  | 6  | June 13 | By cash received of Mr. Alves per receipt.....                            | 400    | 0  | 0  |
| June 13  | To cash paid in part of £.4,400 remaining of your Lordship's and the Honorable Robert Dundas's bond and security, per £.13,000 £.400 0 0                                                                      |       |    |    | July 13 | By the Midsummer dividend on £.2,000 India stock in our name .....        | 105    | 0  | 0  |
|          | 77 days interest on ditto ..... 46 8 2                                                                                                                                                                        |       |    |    | 1804.   |                                                                           |        |    |    |
|          |                                                                                                                                                                                                               | 446   | 8  | 2  | Jan. 14 | By the Christmas do. on do. in do. less tax .....                         | 99     | 15 | 0  |
| Dec. 31  | To 6 months interest to 13th instant, on £.4,000 remaining of do. for do. 100 0 0                                                                                                                             |       |    |    | July 18 | By the Midsummer do. on do. in do. do. ....                               | 99     | 15 | 0  |
|          | Property tax from 5th April ..... 6 17 8                                                                                                                                                                      |       |    |    | 1805.   |                                                                           |        |    |    |
| 1804.    |                                                                                                                                                                                                               | 93    | 2  | 4  | Jan. 19 | By the Christmas do. on do. in do. ....                                   | 99     | 15 | 0  |
| June 23  | To do. to 13th instant on do. .... £.100 0 0                                                                                                                                                                  |       |    |    | July 18 | By the Midsummer do. on do. in do. do. ....                               | 98     | 8  | 2  |
|          | Property tax ..... 5 0 0                                                                                                                                                                                      |       |    |    | 22      | By Alexander Trotter Esq.                                                 | 2,356  | 15 | 1  |
|          |                                                                                                                                                                                                               | 95    | 0  | 0  | 26      | By the Honorable Robert Dundas per receipt.....                           | 2,754  | 7  | 8  |
| Dec. 31  | To do. to 13th instant on do. .... £.100 0 0                                                                                                                                                                  |       |    |    | 1806.   |                                                                           |        |    |    |
|          | Property tax ..... 5 0 0                                                                                                                                                                                      |       |    |    | Jan. 16 | By the Christmas dividend on £.2,000 India Stock in our name less tax ... | 98     | 8  | 9  |
| 1805.    |                                                                                                                                                                                                               | 95    | 0  | 0  | Feb. 3  | By £.2,000 India Stock at 186 per cent                                    |        |    |    |
| June 24  | To do. to 13th instant on do. .... £.100 0 0                                                                                                                                                                  |       |    |    |         | £.3,720 0 0                                                               |        |    |    |
|          | Property tax ..... 5 9 5                                                                                                                                                                                      |       |    |    |         | Transfer                                                                  |        |    |    |
|          |                                                                                                                                                                                                               | 94    | 10 | 7  |         | £.0 8 0                                                                   |        |    |    |
| July 27  | To the Exchequer, on account of your Lordship's first Treasurership of the Navy, ending the 10th April .....                                                                                                  |       |    |    |         | Brokerage                                                                 |        |    |    |
|          | Imprest money received £.5,111 2 9½                                                                                                                                                                           |       |    |    |         | £.2 10 0                                                                  |        |    |    |
|          | Bill money and porters ..... 0 3 6                                                                                                                                                                            |       |    |    |         |                                                                           | 2      | 18 | 0  |
|          |                                                                                                                                                                                                               | 5,111 | 6  | 3  |         |                                                                           | 3,717  | 2  | 0  |
| 30       | To a transfer of India stock                                                                                                                                                                                  | 0     | 4  | 0  |         |                                                                           | 20     | 15 | 2  |
| Sept. 17 | To the Exchequer, for a tally for the sum of £.5,211 2 9½, paid in the 27th July .....                                                                                                                        |       |    |    | 4       | By received.....                                                          |        |    |    |
|          |                                                                                                                                                                                                               | 0     | 12 | 0  |         |                                                                           | 16,877 | 17 | 0  |
| Dec. 31  | To 6th months interest to the 13th instant on £.4,000 remaining of your Lordship's and Robert Dundas's bond per £.13,000 ... £.100 0 0                                                                        |       |    |    |         |                                                                           |        |    |    |
|          | Property tax ..... 6 5 0                                                                                                                                                                                      |       |    |    |         |                                                                           |        |    |    |
| 1806.    |                                                                                                                                                                                                               | 93    | 15 | 0  |         |                                                                           |        |    |    |
| Feb. 3   | To 52 days do, from the                                                                                                                                                                                       |       |    |    |         |                                                                           |        |    |    |



Dr. The Right Honorable Henry Dundas . . with . . Messrs. Thomas Coutts and Co. . . Cr.

| 1806. |                                     | £.     | s. | d.   |
|-------|-------------------------------------|--------|----|------|
|       | 13th December to this day on do.... | £.28   | 9  | 10   |
|       | Property tax.....                   | 1      | 15 | 6    |
|       |                                     |        | 26 | 14 4 |
|       | In full of the principal... 4,000   | 0      | 0  |      |
|       |                                     | 4,026  | 14 | 4    |
|       |                                     | 16,877 | 17 | 0    |

Examined and settled this account with Messrs. Thomas Coutts and Company, which I approve, no balance remaining on either side; and I have received the vouchers.

London,  
the 4th February 1806.

MELVILLE.

Mr. Whitbread.—Were the vouchers delivered up to lord Melville or his agent, when that account was so signed?

Mr. E. Antrobus.—Lord Melville's agent brought the account to the banking-house in the Strand, when the vouchers were delivered up to him.

Mr. Whitbread.—Who was the agent?

Mr. E. Antrobus.—Mr. Le Blanc.

Mr. Whitbread.—Whether to your knowledge Mr. Alexander Trotter's account at your house was ever overdrawn?

Mr. E. Antrobus.—It has been overdrawn.

Mr. Whitbread.—Do you know that the credit of Mr. Trotter's account at your house was in part supplied by public money?

Mr. E. Antrobus.—I know it was supplied by drafts of Mr. Trotter upon the Bank, drawn on account of the treasurer of the navy, and from the magnitude of the sums I can have no doubt but it was supplied by public money.

Mr. Plumer.—For the sake of regularity I must beg to observe upon a question of that nature, which involves several points which are not evidence. In the first place, the witness has spoken to the contents of certain drafts upon the Bank. Had he seen them, that is parol evidence of their contents. The next thing is, they were carried to the Bank. And there are a variety of circumstances that are not evidence.

Mr. Whitbread.—I can assure your lordships, I am very proud of being a disciple of the learned gentleman. I will begin as he has instructed me.

(To Mr. Antrobus.)—Have you ever seen any drafts of Mr. Trotter on the Bank, for supplying the credit of his account at Mr. Coutts?

Mr. E. Antrobus.—I have.

Mr. Whitbread.—Were they drafts upon the Bank of England?

Mr. E. Antrobus.—They were.

Mr. Plumer.—That is giving parol evidence of the contents of drafts, which drafts must speak for themselves.

Mr. Whitbread.—Are those drafts in your possession?

Mr. E. Antrobus.—They are not.

Mr. Whitbread.—Were they delivered to Mr. Trotter?

Mr. E. Antrobus.—Those drafts, the instant they were paid, would, of course, be left at the Bank.

Mr. Whitbread.—We will call a person from the Bank of England to show, that those drafts were delivered at the Bank of England.

Mr. Plumer.—If the honourable manager is now speaking of drafts drawn by Mr. Trotter on the Bank to supply his account, I will not put him to the necessity of proving that. The word was "account"—generally.

Lord Chancellor.—The question was whether Mr. Trotter had an account with Mr. Coutts; and the witness having stated five separate accounts, and that Mr. Trotter had besides a private account of his own, he was asked whether he had ever supplied the credit of that account by drafts drawn upon the Bank for public money; he said he had; and, therefore, he had no reason to doubt that it was public money he was drawing out of the Bank, for the purpose of supplying Alexander Trotter's account.

Mr. Plumer.—If that is understood, I am perfectly satisfied.

Mr. Whitbread.—Did Mr. Trotter's credit consist of large permanent balances, or was it extremely fluctuating, in the house of Messieurs Coutts?

Mr. E. Antrobus.—It was generally a very fluctuating account.

Mr. Whitbread.—Did the drafts upon the Bank of England go to supply partly all Mr. Trotter's accounts at your house?

Mr. E. Antrobus.—They certainly did not.

Mr. Whitbread.—Which account do you except?

Mr. E. Antrobus.—I mean the private account, and the account in trust for Mr. Adam Jellicoe. I cannot speak with certainty to the other three, but I think the drafts went occasionally to all the other three.

Mr. Whitbread.—The Commons propose to produce the books of Mr. Coutts, where it will be seen to what accounts those drafts were paid; and, as the Court spoke yesterday about the delivery of certain books to the Parliament office, the Commons beg that delivery may be postponed till they have had the farther opportunities of reference which may be necessary.



Generally, then, I understand the witness to say, that, excepting the private account and the account in trust for Mr. Adam Jellicoe, the cash from the Bank of England, drawn by Mr. Trotter, went to supply, in part at least, the funds of the other three accounts?

Mr. *E. Antrobus*.—I do say so.

Mr. *Whitbread*.—Whether any interest was allowed by your house upon any of the balances in your hands?

Mr. *E. Antrobus*.—Never.

Mr. *Whitbread*.—I should now wish, that a clerk in the house of Messieurs Coutts, of the name of Chapman, should be called.

Mr. *Plumer*.—Will the honourable manager call this witness again.

Mr. *Whitbread*.—The Commons will have occasion to call him again.

Mr. *Plumer*.—Then I will postpone my cross-examination of him.

Mr. *Whitbread*.—Do you know to which of the other accounts the greater part of those drafts were carried?

Mr. *E. Antrobus*.—To the account in Mr. Trotter's own name, without any other designation.

[The witness was directed to withdraw.]

Then Mr. *William Chapman* was called in, and being sworn, was examined as follows:

Mr. *Whitbread*.—Are you a clerk in the house of Messieurs Coutts?

Mr. *Chapman*.—I am.

Mr. *Whitbread*.—How long have you been a clerk there?

Mr. *Chapman*.—Upwards of eleven years.

Mr. *Whitbread*.—Are you acquainted, generally, with all the books and transactions of that house?

Mr. *Chapman*.—I am.

Mr. *Whitbread*.—Have you examined the books of that house, with a view to ascertain the balances of Mr. Trotter's account, month by month, credit or debit?

Mr. *Chapman*.—I have.

Mr. *Whitbread*.—Is the paper I now put into your hand, in your hand-writing?

Mr. *Chapman*.—It is.

Mr. *Whitbread*.—Have you examined it with a view to the aggregate balance—the result of all Mr. Trotter's accounts?

Mr. *Chapman*.—I have.

Mr. *Whitbread*.—Can you inform the Court, of your own knowledge, what was Mr. Trotter's balance in the hands of Messieurs Coutts, on the 31st December, 1787, excepting the account in trust, for Mr. Adam Jellicoe?

Mr. *Plumer*.—Before that question is put, I beg the Court will permit me to ask this question, as preliminary: whether the books, from which I understand that paper to be collected, are books kept by yourself?

Mr. *Chapman*.—I have drawn that result

from the books of Messieurs Thomas Coutts and Company.

Mr. *Whitbread*.—Are the accounts, contained in those books, signed by Mr. Trotter?

Mr. *Chapman*.—They are.

Mr. *Whitbread*.—Are you acquainted with Mr. Trotter's hand-writing?

Mr. *Chapman*.—I am.

Mr. *Whitbread*.—Are the books in Court?

Mr. *Chapman*.—They are.

Mr. *Whitbread*.—Is the book in your hand a public book of the banking house of Messieurs Coutts?

Mr. *Chapman*.—It is.

Mr. *Whitbread*.—On the part which lies open before you, there is an account of Mr. Alexander Trotter's.

Mr. *Chapman*.—There is.

Mr. *Whitbread*.—Do you find Mr. Trotter's signature there, agreeing to that account?

Mr. *Chapman*.—I do.

Mr. *Whitbread*.—Is that Mr. Trotter's hand-writing?

Mr. *Chapman*.—It is.

Mr. *Whitbread*.—Which of the five accounts is that?

Mr. *Chapman*.—His own account.

Mr. *Whitbread*.—Is that the largest account?

Mr. *Chapman*.—By far.

Mr. *Whitbread*.—We can prove the signature to all the other accounts. Can you state what was the balance in Messieurs Coutts's hand, to the credit of Mr. Trotter, on the 31st of December 1787?

Mr. *Plumer*.—Do your lordships think that the signatures to those books, which would make them evidence against Mr. Trotter, are, therefore, proper evidence against the defendant? I submit it only for your lordships' consideration. I am sure, without my arguing that question, the Court will take care that improper evidence is not given.

Lord Chancellor.—To prove the fact, that the balance is against Mr. Trotter, I presume it is evidence.

A Lord.—It is evidence to prove the fact, that the balance upon that day was against Mr. Trotter; whether it will be carried farther, is another question.

Mr. *Whitbread*.—On the 31st of December 1787, what was the balance in favour of Mr. Trotter, upon the aggregate of all the accounts, with the exception of Adam Jellicoe's trust account always?

Mr. *Chapman*.—On the 31st of December 1787, the balance of Mr. Trotter's account was, creditor 1,140*l.* 3*s.* 4*d.*

Lord Chancellor.—Have you formed that result from other books, and have the books from which it is derived any accounts that have not been signed by Mr. Trotter himself?

Mr. *Chapman*.—No.

Lord Chancellor.—Then you make that result from similar entries to this, now in court?



Mr. Chapman.—I do.

Mr. Plumer.—Does that balance you have spoken of, appear to be struck upon the face of the book, or is it one that you have yourself struck upon calculation from the books?

Mr. Chapman.—This is a balance that I struck myself from the books, but it is properly balanced in the ledger.

Mr. Whitbread.—Did you strike the balances yourself in the books?

Mr. Chapman.—I did.

Mr. Whitbread.—Upon the 31st of May, 1788, how was the balance?

Mr. Chapman.—It was then in Mr. Trotter's favour 7,251*l.* 14*s.* 1*d.*

Mr. Whitbread.—How was the balance on the 31st of May, 1790?

Mr. Chapman.—The balance then was in Mr. Trotter's favour 1,915*l.* 18*s.* 9*d.*

Mr. Whitbread.—How was it on the 31st of March, 1792?

Mr. Chapman.—The balance was in Mr. Trotter's favour 5,580*l.* 7*s.* 11*d.*

Mr. Whitbread.—How was the balance on the 31st of October, 1793?

Mr. Chapman.—The balance in Mr. Trotter's favour was then 2,265*l.* 1*s.* 8*d.*

Mr. Whitbread.—How was the balance on the 30th of April, 1794?

Mr. Chapman.—The balance in Mr. Trotter's favour was 8,196*l.* 17*s.* 10*d.*

Mr. Whitbread.—How was the balance on the 28th of February, 1795?

Mr. Chapman.—The balance then in Mr. Trotter's favour was 47,412*l.* 18*s.* 2*d.*

Mr. Whitbread.—How was the balance on the 30th of April, in the same year?

Mr. Chapman.—The balance then in Mr. Trotter's favour was 107,971*l.* 12*s.* 3*d.*

Mr. Whitbread.—How was the balance on the 29th of February, 1796?

Mr. Chapman.—Mr. Trotter's account was then out of cash, debtor 330*l.* 4*s.* 9*d.*

Mr. Whitbread.—How was the balance on the 31st of March, in the same year?

Mr. Chapman.—His account was then in cash, creditor 14,015*l.* 4*s.* 9*d.*

Mr. Whitbread.—I have omitted the date of the 31st of August, 1795. How was Mr. Trotter's balance then?

Mr. Chapman.—Mr. Trotter's account was then out of cash, debtor 2,649*l.* 8*s.* 3*d.*

Mr. Plumer.—The evidence that is now offered, if it were objected to, certainly could not be received; because unquestionably supposing the books themselves to be evidence of each account referred to, if it were insisted upon or desired, the whole of that account that is the subject of observation, must be presented to your lordships and to us. The honourable manager is selecting certain results with particular dates, which he conceives to be material in support of the prosecution, omitting to state any intermediate balances, omitting to state the items and particulars of that account, the result of which he makes the witness calculate and deliver to your lord-

ships. I am certainly not prepared now to state—not having examined these accounts, and the honourable manager having for months examined them, and produced his results—I am not able to point out what parts of these accounts may be material on the part of the noble defendant, or whether any may be material or not. In this state of the business, I hope it will be understood, that when I do not oppose any objection to these extracts and results, the original accounts not being put upon your lordships' minutes, it is competent for us to consider them as made evidence, and to refer to each account referred to, in order that if it shall hereafter appear there is any thing proper to be produced in evidence on our part, it may be so produced. I do not wish to give your lordships unnecessary trouble, and encumber the minutes with unnecessary matter; but I hope your lordships will not think I act improperly in having this distinctly understood, in order that it may be seen what is made evidence by the course of this proceeding.

Lord Chancellor.—You are perfectly correct in the observation you have made.

Mr. Whitbread.—The books from which these results are extracted, are all in court, capable of being produced immediately to your lordships; and the learned counsel, I understand, admits this, provided he may have access to the books, which he undoubtedly may, that any of these statements may be overturned; but I understand, that whatever exception they may be liable to hereafter, they are admitted by the counsel as evidence.

A Lord.—The books are certainly evidence; but, what he is doing with the books is, he is performing that function, which, with due examination, we can discharge for ourselves, making these extracts and deductions from them. If the counsel are desirous of producing other extracts, and furnishing other conclusions, it is competent for them to do so; but the present examination is the course that prevails every day, in every court of justice; therefore there can be no possible doubt about it.

Another Lord.—I apprehend that there can be no manner of doubt, that the evidence offered to your lordships is legal evidence; for the books are the evidence now before the Court, and the calculations of the witness amount to nothing more than the witness stating upon his oath, that striking the balance on a particular day, that is the result of both sides of the account. What the effect of the proof is to be, must depend upon the proof itself, and such additional evidence from the books, as the counsel for lord Melville may think proper to offer.

Lord Chancellor.—The court is in its ordinary functions receiving this evidence. The admission of the learned counsel, on the other side is, that these entries shall be read by the witness, from the statement he has made from



the books; instead of reading them from the books themselves.

Mr. *Whitbread*.—The Commons so understand it.

Mr. *Plumer*.—When the witness states any balance, I should wish he would state whether the balance he so gives in evidence, is a balance struck upon the book, or the result of a calculation founded upon that book?

Mr. *Chapman*.—I have not taken the balance to be found upon the ledger, but my own result.

Lord *Chancellor*.—Are the balances struck in the book, or are they the result of your own calculations, taking the books for the basis of them?

Mr. *Chapman*.—They are the result of my calculations.

Mr. *Whitbread*.—What was the balance of Mr. Trotter's account on the 31st of August, 1795?

Mr. *Chapman*.—The balance was then, against Mr. Trotter, 2,649*l.* 8*s.* 3*d.*

Mr. *Whitbread*.—You have been previously asked to the 29th of February, 1796, and the 31st of March; I wish now to have your answer to the last day of April, 1796?

Mr. *Chapman*.—On the 30th of April, 1796, Mr. Trotter's account was out of cash, debtor 2,248*l.* 17*s.* 10*d.*

Mr. *Whitbread*.—How was Mr. Trotter's account on the 31st of May, in the same year?

Mr. *Chapman*.—It was then out of cash, debtor 2,286*l.* 15*s.* 9*d.*

Mr. *Whitbread*.—How was Mr. Trotter's account on the 30th of June, 1797?

Mr. *Chapman*.—Mr. Trotter's account was then in cash, creditor 45,702*l.* 2*s.* 10*d.*

Mr. *Whitbread*.—How was Mr. Trotter's account on the 31st of January, 1798?

Mr. *Chapman*.—It was then out of cash, debtor 31,776*l.* 0*s.* 4*d.*

Mr. *Whitbread*.—How was the account the 30th of September, 1798?

Mr. *Chapman*.—It was then, creditor 258*l.* 15*s.* 5*d.*

Mr. *Whitbread*.—How was Mr. Trotter's account on the 31st of August, 1799?

Mr. *Chapman*.—It was then out of cash, debtor 88*l.* 15*s.* 8*d.*

Mr. *Whitbread*.—How was Mr. Trotter's account on the 31st of March, 1800?

Mr. *Chapman*.—It was then debtor 3,184*l.* 11*s.* 7*d.*

Mr. *Whitbread*.—How was his account on the 30th of April, in the same year?

Mr. *Chapman*.—It was then in cash, creditor 8,523*l.* 16*s.* 9*d.*

Mr. *Whitbread*.—Take a book of Messieurs Coutts before you, having the account of Mr. Trotter on the 4th of September, 1792. What account have you now got before you?

Mr. *Chapman*.—The account I now have before me is called Mr. Alexander Trotter's own account.

Mr. *Whitbread*.—Whether there is an entry

in the early part of the month of September, I believe on the 4th, of a debit for the purchase of India stock?

Mr. *Chapman*.—I find an entry for the purchase of India stock on the 4th of September, 1792?

Lord *Chancellor*.—Read the whole of that entry.

Mr. *Chapman*.—1792, September 4th, 2,000*l.* India stock, at 203¼*l.* per cent, 4,057*l.* 10*s.*

Mr. *Whitbread*.—What was Mr. Trotter's balance, pro and con. on the morning of that day, before there were any receipts or payments?

Mr. *Chapman*.—Mr. Trotter was, on the morning of that day, creditor 246*l.* 8*s.* 6*d.*

Mr. *Whitbread*.—I ask to Mr. Trotter's own account only?

Mr. *Chapman*.—I am now speaking to his own account only.

Mr. *Whitbread*.—Now read the credit entered to Mr. Alexander Trotter's account on that day?

Mr. *Chapman*.—There appears on that account, one credit only—"By cash received, 8,000*l.*"

[The witness was directed to withdraw.]

Mr. *Whitbread*.—I will now call another witness to produce the waste-book, to inform the Court. We wish to point your lordships' attention to this 2,000*l.* India stock, which was before spoken of by the Commons, which we shall trace into the possession of lord Melville, and to show your lordships how that 2,000*l.* was ultimately disposed of.

Then Mr. *William Charlton* was called in, and, being sworn, was examined as follows:

Mr. *Whitbread*.—Are you a clerk in the house of Messieurs Coutts?

Mr. *Charlton*.—I am.

Mr. *Whitbread*.—How long have you been in that house?

Mr. *Charlton*.—Twenty-two years.

Mr. *Whitbread*.—What is that book which lies before you?

Mr. *Charlton*.—The waste-book.

Mr. *Whitbread*.—Is any part of that waste-book written by yourself? are the entries on the fourth of September, 1792, or any of them, in your own hand-writing?

Mr. *Charlton*.—Yes.

Mr. *Whitbread*.—Do you find an entry of the payment of a draft to the credit of Mr. Alexander Trotter on that day?

Lord *Chancellor*.—Referring to any entry of your own, answer that question.

Mr. *Charlton*.—Yes.

Mr. *Whitbread*.—Read that entry to the Court.

Mr. *Charlton*.—"Alexander Trotter, 8,000*l.* his draft on the Bank of England 8,000*l.* credit, his own account."

Mr. *Whitbread*.—Which brings it to the account in the ledger, of which Mr. Chapman has been speaking.



Then Mr. William Charlton was cross-examined as follows:

Mr. Plumer.—You have no memory of the transaction, but speak entirely from the entry in the book?

Mr. Charlton.—Not the least.

[The witness was directed to withdraw.]

Then Mr. William Chapman was again called in, and examined as follows:

Mr. Whitbread.—Refer to Mr. Trotter's own account in Mr. Coutts's ledger, 797. Do you know, of your own knowledge, whether in 1792 Mr. Alexander Trotter had any more than two accounts?

Mr. Chapman.—I cannot answer from recollection, but I believe he had more.

Mr. Whitbread.—Refer to the 13th of January, 1797?

Mr. Chapman.—This is not the right book.

Mr. Whitbread.—Refer to Mr. Alexander Trotter, paymaster's account of the 4th of September, in the year 1792, and calculate what was the balance of Mr. Trotter's account, either for or against. On the morning of that day, how is the paymaster's account before any of the transactions of that day commenced?

Mr. Chapman.—The paymaster's account of Alexander Trotter, on the 4th of September, 1792, was out of cash, debtor 102*l.* 19*s.* 2*d.*

Mr. Whitbread.—Had Mr. Alexander Trotter any other accounts opened at that time besides his own account, to which you have before spoken, and his paymaster's account?

Mr. Chapman.—He had.

Mr. Whitbread.—What was that account?

Mr. Chapman.—An account called his private account.

Mr. Whitbread.—What did that private account consist of?

Mr. Chapman.—That I do not know.

Mr. Whitbread.—Read the entries in the book.

Mr. Chapman.—“1792 (on the credit side), June the 23rd, by balance brought from the last ledger 25,000*l.*”

Mr. Whitbread.—Read the debit side.

Mr. Chapman.—“1792, December the 10th, to cash paid his account 10,000*l.*”---“1793, February 8th, ditto, 15,000*l.*”

Mr. Whitbread.—Was there any other account opened at that time, besides his own account, his paymaster's account, and his private account, which you have last spoken of?

Mr. Chapman.—There was.

Mr. Whitbread.—What was that account?

Mr. Chapman.—An account in trust for the estate of Adam Jellicoe, esq. deceased.

[The witness was directed to withdraw.]

Mr. Whitbread.—We do not wish to draw your lordships' attention to that account, because that account the Commons have put out of their consideration altogether.

Then Edmund Antrobus, esq. was again called in, and examined as follows:

Mr. Whitbread.—Refer to Mr. Alexander Trotter's private account of the 4th of September 1792. Do you know to what transactions these entries relative to a sum of 25,000*l.* relate?

Mr. E. Antrobus.—The credit of 25,000*l.* relates to a sum that was paid in to Mr. Mansfield, at Edinburgh, on our account, by Mr. Trotter.

Mr. Whitbread.—Does that entry refer solely to that account?

Mr. E. Antrobus.—It refers solely to that money.

Mr. Whitbread.—Is it independent of all Mr. Alexander Trotter's other accounts?

Mr. E. Antrobus.—It is.

Mr. Whitbread.—And did the house of Messieurs Coutts hold that sum in trust, on account of Mr. Alexander Trotter?

Mr. E. Antrobus.—It was paid in by Mr. Robert Trotter, and held by his direction at the disposal of Mr. Alexander Trotter. Messieurs Mansfield and Company, I believe, did not know any thing of Mr. Alexander Trotter's name in the transaction.

Mr. Whitbread.—In fact, was it Mr. Alexander Trotter's money, or money upon his account?

Mr. E. Antrobus.—It was.

Mr. Whitbread.—Does that entry contain any thing except that which relates to that single transaction?

Mr. E. Antrobus.—This account does not contain any thing else.

Mr. Plumer.—Did I understand you rightly that, as to this sum, which was paid in on account of Mansfield and Company, that house was not, you believe, cognizant on whose account that was paid, whether on Robert or Alexander Trotter's, or on account of Mr. Coutts's house?

Mr. E. Antrobus.—I believe not.

Mr. Plumer.—They conceived it to be Mr. Robert Trotter's?

Mr. Whitbread.—I hope the learned counsel will not instruct me one way by his example, and another by his precept. It strikes me that the learned counsel has put a question which he would not permit me to put; a question upon the account, without having first established the account.

Mr. Plumer.—The question I put was founded upon the question of the honourable manager's, and the answer the witness had given.

Mr. Whitbread.—As soon as you received this 25,000*l.* you did not immediately credit Mr. Alexander Trotter with the amount?

Mr. E. Antrobus.—We did not receive the money at that time; but as soon as Mansfield, Ramsay, and Company gave us information of their having such a sum paid them, by Mr. Robert Trotter, to the credit of Mr. Alexander Trotter, we debited them for that



sum, and placed the same to the credit of Mr. Alexander Trotter's private account.

*A Lord.*—Whether, upon the 4th of September, 1792, Mr. Alexander Trotter had, by reason of this transaction, or had not such a credit with the house of Messieurs Coutts, that he could have drawn upon them for 8,000*l.* by virtue of this last account?

*Mr. E. Antrobus.*—He might have done it.

*A Lord.*—Whether the 25,000*l.* was placed to the credit of Mr. Coutts, or of Alexander Trotter?

*Mr. E. Antrobus.*—In Mansfield and Company's book, it was placed to the credit of Mr. Thomas Coutts and Company, and not to the credit of Alexander Trotter.

*Lord Chancellor.*—And as soon as you had intimation of that, you debited Mansfield, Ramsay, and Company, and put it to Mr. Alexander Trotter's private account?

*Mr. E. Antrobus.*—Yes.

*A Lord.*—Do I understand you correctly, when I understand you to mean this: that Messieurs Coutts had a credit with Mansfield and Company, for 25,000*l.*, and that they gave a credit to Alexander Trotter for that 25,000*l.*; but that Alexander Trotter might have drawn upon Coutts and Company to that amount, on the fourth of September, 1792?

*Mr. E. Antrobus.*—As soon as Mansfield and Company had communicated to us, that they had such a credit, and we had placed it to Mr. Alexander Trotter's account, he might have drawn for it certainly.

*A Lord.*—How soon was that communication made by Mansfield and Company, that Messieurs Coutts had credit with them for that money?

*Mr. E. Antrobus.*—From looking at the book now, I find it was in the beginning of October, 1789, that we received the intimation of it from Mansfield and Company.

*A Lord.*—What interest was paid by Messieurs Mansfield and Ramsay upon that sum?

*Mr. E. Antrobus.*—They paid an interest after the rate of four per cent per annum.

*A Lord.*—Is it customary to draw upon bankers, without previous notice, for money lodged in Scotland, at the rate of four per cent per annum interest?

*Mr. E. Antrobus.*—I am not acquainted with the customs of the bankers in Scotland, this was an arrangement made for the purpose of sending up the money here; but I cannot speak as to the custom of the bankers in Scotland.

*A Lord.*—Whether you understood from Mr. Trotter, why a particular account was opened, intitled, "The private Account," with reference to the transaction of this sum of 25,000*l.* with Mansfield and Company?

*Mr. E. Antrobus.*—I cannot speak now as to what was done at the time, but I can easily suppose what was the reason of it; I cannot speak with certainty to any conversation at the time.

*A Lord.*—Do you know of any purpose of

convenience that would be answered by opening an account with that distinct head?

*Mr. E. Antrobus.*—I do.

*A Lord.*—What is that convenience?

*Mr. E. Antrobus.*—By the money being immediately at the credit of Mr. Alexander Trotter, he could call for it whenever he pleased; if it had not been so, he must have waited till he could send down to Scotland, and have the money sent up to him.

*Mr. Whitbread.*—My lords, the Commons feel that the evidence on this part is extremely intricate, but they hope they have proved, to your lordships' satisfaction, what they undertook to prove; which was, that on the 4th of September, 1792, Mr. Trotter purchased 4,000*l.* East India stock, 2,000*l.* of which, as stated in the books produced in evidence, was for the right honourable Henry Dundas; that the draft, with which that stock was paid for, was given on his own account; that the account, on the morning of that day, stood creditor in the sum of 400*l.* or thereabouts; that the only credit given in that account, on that day, was for a draft on the Bank of England of 8,000*l.*; that in Mr. Trotter's paymaster-account, which is the second account referred to, Mr. Trotter stood debtor to the house of Coutts; on the same day in this private account, which refers solely to the transaction of Mansfield, Ramsay, and Company, there was a credit to the amount of 25,000*l.* out of which Mr. Antrobus states, that Mr. Trotter might have drawn 8,000*l.*; there is another account in the books, which makes the fourth account, in trust for Adam Jellicoe, to which we do not at all refer. I take this to be the state of the evidence on this transaction at present. I beg now to refer to Mr. Chapman.

*Mr. Plumer.*—I beg to put one question: Whether, at this time in September, the credit of Mr. Trotter with your house was such, that supposing that draft upon the Bank, by which he had credit for 8,000*l.* had not existed, and that Mr. Trotter had drawn to that amount, would he have had credit for it?

*Mr. E. Antrobus.*—We should have paid his draft.

*Mr. Plumer.*—Were all the drafts of Mr. Alexander Trotter upon the Bank of England, drafts on account of Mr. Dundas, as treasurer of the navy?

*Mr. E. Antrobus.*—I have never seen any that were otherwise.

*Mr. Plumer.*—Confine yourself to those that you have seen—was it so?

*Mr. E. Antrobus.*—All those that I have seen have been so.

*A Lord.*—Were all those five accounts which have been spoken to, in that book? or are they in different books?

*Mr. E. Antrobus.*—I believe, at this time, one of the accounts was closed, but all the accounts in the name of Mr. Trotter were kept in one book.

*A Lord.*—You have stated, that indepen-



dently of that 8,000*l.* if Mr. Trotter had not had this credit, you would have suffered him to overdraw his account up to that amount; would you have suffered him so to have overdrawn his account, if he had not been in the situation of paymaster of the navy?

Mr. *E. Antrobus*.—If he had come and made the request, I think under many circumstances we should have paid his draft; it would have depended upon the circumstances attending the case; if Mr. Trotter had been a poor man, or a variety of circumstances might have altered that.

A Lord.—If Mr. Trotter had overdrawn his account, would interest have been charged upon him according to the sums that he over-drew?

Mr. *E. Antrobus*.—I rather think not, and particularly if it had been merely a temporary advance; it appears that the account has been frequently overpaid, and there never was an interest charged upon those advances, it was merely a temporary case.

A Lord.—Then would such credit have been given without charging any interest?

Mr. *E. Antrobus*.—I cannot speak to that; if it had been likely to be permanent, we should have desired Mr. Trotter to sign a note or bond, or give some security for it, and the interest would have commenced.

A Lord.—You said before, that you had delivered vouchers to Mr. Le Blanc—state when it was that you so delivered them?

Mr. *E. Antrobus*.—I cannot recollect the precise date, but it was very recently; it was very soon after the date of the account being signed. The account appears to have been signed by lord Melville about the 4th of February, 1806, when it is dated; it might be probably a few days afterwards; and a few days subsequent to that, vouchers were delivered up to Mr. Le Blanc.

A Lord.—Am I to understand that this paper was signed before it was dated?

Mr. *E. Antrobus*.—At the time this account was transmitted to lord Melville, he was down at Bath, and when we send an account away, we generally write the sort of docket we wish the party to sign, and date it the day it is sent away; consequently, it might be a day or two after that before lord Melville signed it.

A Lord.—Whether the vouchers have, in point of fact, been delivered to lord Melville's solicitor?

Mr. *E. Antrobus*.—They have been delivered to Mr. Le Blanc?

A Lord.—Were any vouchers before that time delivered up to lord Melville?

Mr. *E. Antrobus*.—The vouchers that were now delivered up, are from the commencement of the account; it is possible that some single voucher may have been delivered up, and another acknowledgment taken in lieu of it, but I do not recollect any such circumstance, nor do I believe that there was any.

A Lord.—When did lord Melville last settle his account?

Mr. *E. Antrobus*.—I believe lord Melville never did settle his account previous to the period now spoken of.

A Lord.—Did you see these vouchers yourself delivered to Mr. Le Blanc?

Mr. *E. Antrobus*.—I can speak almost to a certainty that I saw them delivered up—I know they were delivered up by my directions.

[The witness was directed to withdraw.]

Then Mr. *William Chapman* was again called in, and examined as follows:

Mr. *Whitbread*.—Quitting for the present the thread of the history, as to the 2,000*l.* India stock; I wish to call your lordship's attention to a certain quantity of loyalty loan, which, it is in evidence before your lordships, was purchased by Messieurs Coutts and Co. for the benefit of lord Melville; and first to have been taken (that is, the capital with which it was purchased), into the account current of Mr. Trotter, and afterwards to have been transferred to the Chest account. I beg to put into the hand of the witness, who is a clerk to Messieurs Coutts, the signed account of lord Melville which has been received by the counsel on the other side.

Mr. *Plumer*.—I believe some of the statements that are made, are sometimes entered upon your lordships minutes, and, therefore, they should be correct. The honorable manager supposes it has been in proof that the loyalty loan was purchased either by Mr. Trotter or Mr. Coutts. I do not remember that either of those facts were proved. I think, the witness interrogated upon the subject, said he knew nothing by whom it was purchased.

Lord Chancellor.—Nothing that the honourable managers say can go for evidence.

Mr. *Whitbread*.—I believe it was in evidence that there was a certain quantity of the loyalty loan purchased for, and repayment made by Mr. Alexander Trotter for that purpose.

Mr. *Plumer*.—I did understand the evidence to be that, as to the original purchase, the witness knew nothing. He stated that it was originally purchased (for what he knew of it) with the money of lord Melville, but the subsequent instalments only he spoke of.

Mr. *Whitbread*.—That the payments were made by Alexander Trotter, and carried to his account, and from his account transferred to the account current, and from the account current to the Chest account. I beg to refer the witness to the debit side of lord Melville's account on the 13th of January 1797:—What do you find entered on that day?

Mr. *Chapman*.—It appears that on the 13th of January, 1797, there is an entry, to bearer 500*l.* and also the first payment of ten per cent on 10,000*l.* new loan 1,000*l.*

Mr. *Plumer*.—Have you read the whole of that last entry? if not, read the whole of it.



Mr. Chapman.—I have read the whole of it.

Mr. Whitbread.—Turn to another payment, supposed to have been made on the same account, on the 17th March.

Mr. Chapman.—The second payment of ten per cent, on 10,000*l.* new loan 1,000*l.*

Mr. Whitbread.—Refer to April 23rd of the same year, to a similar entry.

Mr. Chapman.—April the 23rd, 1797, the third payment on ditto 1,000*l.*

Mr. Whitbread.—Refer to the 2nd of June, 1797, for a similar entry.

Mr. Chapman.—The 2nd of June, 1797, the fourth payment of ten per cent on 10,000*l.* new loan 1,000*l.*

Mr. Whitbread.—Refer to the 21st of July, in the same year.

Mr. Chapman.—The 21st of July, of the same year, the fifth payment of fifteen per cent on 10,000*l.* new loan 1,500*l.*

Mr. Whitbread.—Turn to the 25th of August, of the same year.

Mr. Chapman.—The 25th of August, the sixth ditto, on ditto, 1,500*l.*

Mr. Whitbread.—Turn to the entry of the 27th September of the same year.

Mr. Chapman.—September 27th, the full payment on 10,000*l.* loyalty loan 3,000*l.*; discount 8*l.* 7*s.* 8*d.*—2,991*l.* 12*s.* 4*d.*

Mr. Whitbread.—Refer to the credit side of the same account, and read an entry of the 14th of January, 1797.

Mr. Chapman.—January the 14th, 1797, by cash received of Alexander Trotter, esquire, per receipt 1,000*l.*

Mr. Whitbread.—Refer to the 25th of April, of the same year.

Mr. Chapman.—April the 25th, 1797, by Alexander Trotter, esquire's account 2,000*l.*

Mr. Whitbread.—Refer to an entry of the 7th of June, of the same year.

Mr. Chapman.—June the 7th of the same year, by ditto 1,000*l.*

Mr. Whitbread.—Refer to an entry of the 29th of July, in the same year.

Mr. Chapman.—July the 29th, of the same year, ditto, ditto 1,500*l.*

Mr. Whitbread.—Refer to an entry of the 1st of September, of the same year.

Mr. Chapman.—The first of September, by Alexander Trotter, esquire, 1,500*l.*

Mr. Whitbread.—Refer to an entry of the 27th of September, of the same year.

Mr. Chapman.—By ditto 3,000*l.*

Mr. Whitbread.—Cast up these sums on the credit side, and see whether they do not tally with the other sums in the amount of 10,000*l.* What is the sum?

Mr. Chapman.—The sum of the total is 10,000*l.*

Mr. Whitbread.—That 10,000*l.* on the debit side, and 10,000*l.* on the credit, form the special entries that have been read, minus the 8*l.* 7*s.* 8*d.*?

Mr. Chapman.—Yes.

Mr. Whitbread.—What do you find to be the amount of the debit side of those items?

Mr. Chapman.—I find the total amount to be 10,000*l.*

Mr. Plumer.—You have been speaking of this loyalty loan, do you know that that stock called the loyalty loan did, soon after the subscription to it, considerably fall?

Mr. Chapman.—I do not.

Mr. Whitbread.—I apprehend it is in proof from this part of the books, that lord Melville's account between the 13th of January and the 27th of September, inclusive, of the year 1797, was debited by Messieurs Coutts, in the sum of 10,000*l.* That lord Melville's account, between the 14th of January and the 27th of September of the same year, both inclusive, was credited for the sum of 10,000*l.* by payments made as it stands in those books, by Mr. Alexander Trotter. Now, I propose to refer to a farther account in this book, to show when this loyalty stock was sold; and for that purpose I wish the witness to refer to the entry on the 21st of May, on the same account.

What do you find upon the credit side of lord Melville's account, on the 21st of May, 1800?

Mr. Chapman.—I find an entry;—"By cash received of Mark Sprot, esq. the produce of 11,250*l.*—New five per cents 10,757*l.* 16*s.* 3*d.*

Mr. Whitbread.—I apprehend it is shown, that this loyalty loan, ending in September, 1797, having cost 10,000*l.* was sold in May, 1800, for 10,757*l.* 16*s.* 3*d.* Was lord Melville credited for the amount of that sale?

Mr. Chapman.—It would appear so, from the accounts of Messieurs Thomas Coutts and Company.

Mr. Whitbread.—Are you referring to the signed accounts in your hand?

Mr. Chapman.—I am.

Mr. Whitbread.—Refer to the next entry of any sum in the same account on the credit side, and see what the figures are.

Mr. Chapman.—May the 21st, 1800, on the credit side, I find the credit of 8,433*l.* 14*s.* 11*d.* Reduced 5,313*l.* 5*s.* 2*d.*

Mr. Whitbread.—Am I to understand that the amount of the Stock is 8,433*l.* 14*s.* 11*d.* and the produce of the sale is 5,313*l.* 5*s.* 2*d.*

Mr. Chapman.—It is to be so understood.

Mr. Whitbread.—Refer to an entry of the same day, of the sale of 3,566*l.* 5*s.* 1*d.* consols, the produce of which would appear to be 2,282*l.* 8*s.*

Mr. Chapman.—There is such an entry;—3,566*l.* 5*s.* 1*d.*, consols, 2,282*l.* 8*s.*

Mr. Whitbread.—Refer to the next entry of the 22d of May 1800, and read it.

Mr. Chapman.—May the 22d, 1800. By the value of your and Mr. Robert Dundas's bond, and security of this date, 13,000*l.*

Mr. Whitbread.—Now cast up for the information of the Court, the four different sums 10,757*l.* 16*s.* 3*d.* 5,313*l.* 5*s.* 2*d.* 2,282*l.* 8*s.* and 2,098*l.* 15*s.* upon the credit of lord Melville's account, and state what they amount to?



Mr. Chapman.—The total amount is 20,452*l.* 4*s.* 5*d.*

Mr. Whitbread.—Now refer to an entry of May the 22d, 1800, on the debit side of lord Melville's account.

Mr. Chapman.—May the 22nd, 1800, To act of parliament new account 13,000*l.*

Mr. Whitbread.—Read the next entry of the same date.

Mr. Chapman.—To ditto 19,024*l.* 12*s.* 6*d.*

Mr. Whitbread.—Read the next entry on the debit side of the account.

Mr. Chapman.—The same date—To Mark Sprot, esq. 1,427*l.* 11*s.* 11*d.*

Mr. Whitbread.—Cast up the two sums 19,024*l.* 12*s.* 6*d.* and 1,427*l.* 11*s.* 11*d.* and state the result?

Mr. Chapman.—The amount of those two sums is 20,452*l.* 4*s.* 5*d.*

Mr. Whitbread.—Does it not exactly tally with the result of the sales of the loyalty, the reduced, the consols, and the India stock, mentioned on the other side?

Mr. Chapman.—It does.

Mr. Whitbread.—Refer back to the entry on the credit side of lord Melville's account, relative to the India stock.

Mr. Chapman.—On the 21st of May, 1800, 1,000*l.* India stock, 2,098*l.* 15*s.*

Mr. Whitbread.—Did you include that India stock in the calculation you made of the whole amount?

Mr. Chapman.—I did.

Mr. Whitbread.—I apprehend it is now in proof before your lordships, that lord Melville's account was credited at the house of Messieurs Coutts, on the 21st of May, 1800, in 10,755*l.* 16*s.* 3*d.* being the produce of the 5 per cent stock sold; that his account was credited in 5,333*l.* 5*s.* 2*d.* the amount of reduced annuities sold; in 2,282*l.* 8*s.* on account of consols sold, and 1,000*l.* India stock sold for 2,098*l.* 15*s.* making upon the sale of those stocks a credit of 20,452*l.* 4*s.* 5*d.*—he was likewise credited for 13,000*l.* upon a bond and security of the same date; that he was debited, on the same day, for 13,000*l.* a payment made to his Act of Parliament account; on the same day, for the same account, in 19,024*l.* 12*s.* 6*d.* and on the same day, in a payment to Mark Sprot, of 1,427*l.* 11*s.* 11*d.* precisely tallying with the credit stated on the other side. If that is proved, I shall beg to call Mr. Coutts Trotter.

Then Mr. William Chapman was cross-examined as follows:

Mr. Plumer.—You have been speaking of Mr. Trotter's accounts; whether, during any and what period Mr. Trotter had credit for 25,000*l.*?

Mr. Chapman.—I cannot state from recollection.

A Lord.—Is it intended that these accounts should be delivered in?

Mr. Whitbread.—Undoubtedly.

Lord Chancellor.—This will be a proper

time for stating that, undoubtedly the accounts upon which you build must be brought in, and delivered into the hands of the Court, for the inspection of the Lords, or of the counsel for the defendant, if they think proper.

[The same were accordingly delivered in.]

A Lord.—I only wish to ascertain the fact, because the effect of particular items upon particular items, must depend altogether on the general effect of the whole. You have been referring to that paper when giving your evidence; had you received any notification from any person of the specific entries to which you should be examined before this Court?

Mr. Chapman.—Not on this account, but I had on Mr. Alexander Trotter's account.

A Lord.—Would you, by referring to that paper alone, be able to answer any question, touching other matters than those to which you have been examined, without such previous notification?

Mr. Chapman.—Certainly not.

Mr. Whitbread.—Is this paper your handwriting?

Mr. Chapman.—It is.

Mr. Whitbread.—Does that paper contain every balance of Mr. Trotter's account, month by month?

Mr. Chapman.—It does.

Mr. Whitbread.—The Commons had prepared, and were ready to prove, every monthly balance in the way they did the former, but it was to save the time of the Court that we selected particular balances, and proved them which correspond exactly with the balances stated yesterday.

A Lord.—How long did you state that you had been a clerk at the house of Messieurs Coutts?

Mr. Chapman.—Upwards of eleven years.

A Lord.—If you have been no longer than eleven years clerk to the house of Messieurs Coutts, I desire to know upon what ground you speak to credits and debits of the house beginning in the year 1788?

Mr. Chapman.—I speak of them only as from the ledgers of Messieurs Thomas Coutts and Company.

A Lord.—Were those ledgers signed by Mr. Trotter?

Mr. Chapman.—Most of the accounts were.

A Lord.—Does it appear that in this period, between January 1797, and September 1797, when those several payments were made, as given in evidence, that there were not many other payments made by Mr. Alexander Trotter; because I think, if that be the case, whatever may be the effect of it, it ought to be upon the evidence.

Mr. Chapman.—It appears there have been several.

A Lord.—Read those different payments to the Court?

Mr. Chapman.—There were several payments made by lord Melville. It does not



appear, by this account, that there were any made by Mr. Alexander Trotter.

Mr. *Whitbread*.—It appears that 10,000*l.* loyalty loan was purchased; is that the loyalty loan sold for 11,250*l.*?

Mr. *Plumer*.—I wish to know what evidence is proposed to stand upon your lordships' minutes. I do not quite collect now, whether it is intended that any particular account, of which an extract has been given, and the result has been given, should stand upon your lordships' minutes; that is to say, the account of that date from whence that inference is drawn; or whether it is proposed to give in the books in general, in order that any one of your lordships, or the defendant, may have liberty hereafter to adduce any part of the accounts. If it is intended by them, in the first instance, to put the accounts, from which those results are given, upon the minutes, then I understand it will be competent for all your lordships to see and to compare it.

Mr. *Whitbread*.—The Commons propose to put in the original account of lord Melville, signed by himself; which contains every item of his lordship's account in the books, and to add to that the books of Messieurs Coutts themselves, to which the learned counsel, or the Court, may have reference for every item of the account.

Mr. *Plumer*.—But your lordships have had given to you certain balances, struck in Mr. Trotter's account, at different periods. I desire to know whether the items which constitute that account, the result of which is only given in, are proposed to be entered upon the minutes?

Mr. *Whitbread*.—It is proposed to offer to your lordships all the books from which those results are taken.

Mr. *Plumer*.—I only wish to know with respect to each account, the balance of which is selected at different periods, whether it is proposed to put upon the minutes the items which compose that account, the balance of which is so given in?

Mr. *Whitbread*.—It is the wish of the Commons, to give the learned counsel the utmost information he can require upon the subject of this account, and whatever shall be judged to be the way to give it most fully, that it is the wish of the Commons to take.

A *Lord*.—Does that paper, you state to be in your hand-writing, contain the whole account, or only the extracts of particular items from the account?

Mr. *Chapman*.—I presume it is the whole account.

A *Lord*.—I wish to know, and clearly to understand, whether you can positively swear to that paper?—Is it signed by lord Melville?

Mr. *Chapman*.—The signature of lord Melville is annexed to the account, but I cannot swear to it.

A *Lord*.—I apprehend it will tend to explain, if I state to the Court, that the course

the managers propose I understand to be this,—they have produced books which are signed by Mr. Trotter, and are therefore evidence against Mr. Trotter; how much farther that evidence can be carried depends upon what is subsequently to be proved. They have also proved particular balances at certain periods of this account, and that mode of proceeding is no more than this, which is usual,—that the several entries in the books being attested by the signature of Mr. Trotter, are sufficiently proved to be read, in order to establish the account as against Mr. Trotter. For the purpose of finding out what are the balances of the accounts so established at particular periods; in theory, though not in practice, the several items of the accounts are supposed to be read, and the individual who produces the paper of balances, is taken to swear that he has gone through the items on both sides of it, and that at the particular dates to which he speaks such are the balances; that way of representing the evidence supposes all the items, the result of which are so spoken to, to be part of the evidence before the Court.

With respect to the other account, it is signed by lord Melville himself; it is, therefore, without more distinct evidence, as far as it goes, evidence against lord Melville; that account so signed must be entered upon the minutes. The counsel on the other side, of course, if they think proper, will look to the books in order to see whether the balances have been properly given, and if they think fit to insist upon it, they will have a right (as to which they will exercise their own discretion) to put upon your lordships minutes all the items in those books; for those items, the result of which is now collected, are in evidence.

Is the balance paper in your hand—not lord Melville's account, but the other—a list of the aggregate balances, or of all the balances besides the aggregate balances?

Mr. *Chapman*.—It is a list of the aggregate balances; it contains also the balances separately.

Mr. *Whitbread*.—Does not the paper in your hand contain the balances struck separately, at the end of each month, and the aggregate balance of the whole?

Mr. *Chapman*.—It does; the separate balances are struck, and the aggregate balance carried out afterwards.

Mr. *Whitbread*.—Your lordships will have observed, that 10,000*l.* loyalty loan only, was purchased, according to the accounts, and that 11,250*l.* new 5 per cents was sold. The Commons wish to show, that an act of parliament, which passed on the twenty-third of November, 1796, performed an operation upon that loyalty loan; that the 10,000*l.* by that act, had increased to the precise sum of 11,250*l.* new 5 per cents, making these sums of 10,000*l.* and 11,250*l.* tally. The act is the 37th Geo. 3rd, cap. 10, sec. 1. This act says, that every contributor of 100*l.* is entitled to the principal



of 112*l.* 10*s.* in the new 5 per cents from the 10th October, 1796. I wish to ask the witness, whether upon that calculation, the sum of 10,000*l.* stock would not appear, at the time it was sold, to be 11,250*l.*?

Mr. *Chapman*.—It would appear so.

A *Lord*.—Having proved what were the separate, and what were the aggregate balances, at the end of every month, have you enabled yourself to state, either what were the separate balances or the aggregate balances, during the currency of every month, from week to week?

Mr. *Chapman*.—I have not.

A *Lord*.—Were those monthly balances shown to Mr. Trotter, and acknowledged by him?

Mr. *Chapman*.—I believe not.

A *Lord*.—When were they shown to Mr. Trotter, and when were they acknowledged?

Another *Lord*.—I understand the books were shown to Mr. Trotter, and signed by him; but the witness, I understood, said the balances were made by himself, and not shown to Mr. Trotter.

[The witness was directed to withdraw.]

Then *Coutts Trotter*, esquire, was called in, and, having been sworn, was examined as follows:

Mr. *Whitbread*.—Are you a partner in the house of Messieurs *Coutts* and Company?

Mr. *C. Trotter*.—I am.

Mr. *Whitbread*.—Were you so previous to the year 1800?

Mr. *C. Trotter*.—I was.

Mr. *Whitbread*.—Have you any knowledge relative to a loan advanced to lord Melville, by the house of *Coutts* and Company, for the sum of 13,000*l.*?

Mr. *C. Trotter*.—I know that such a sum was advanced by way of loan.

Mr. *Whitbread*.—Were you the person who transacted that business between the house and lord Melville?

Mr. *C. Trotter*.—Principally.

Mr. *Whitbread*.—Had you any conversation with lord Melville, upon that subject?

Mr. *C. Trotter*.—I had.

Mr. *Whitbread*.—State what was that conversation, merely as to the matter of business?

Mr. *C. Trotter*.—My brother Alexander had previously spoken to me, and told me lord Melville would have occasion for such a loan; and seeing lord Melville, the conversation turned more upon the nature of the security, than upon any other subject, nor do I recollect that any other conversation passed.

Mr. *Whitbread*.—Was the sum intended to be borrowed, always the specific sum of 13,000*l.*?

Mr. *C. Trotter*.—From some circumstances that have occurred lately, I think so; but I cannot say from any remembrance of it myself.

Mr. *Whitbread*.—Do you think it was al-

ways 13,000*l.* that was intended to be borrowed?

Mr. *C. Trotter*.—I do not now think so.

Mr. *Whitbread*.—What do you think was the original sum intended to be borrowed?

Mr. *C. Trotter*.—From the kind of recollection which I allude to, I think it was 10,000*l.*

Mr. *Whitbread*.—Do you know what was the cause of the increase?

Mr. *C. Trotter*.—I do not.

Mr. *Whitbread*.—Did you make any communication to lord Melville, of any thing which had passed between you and Mr. Alexander Trotter, upon this subject?

Mr. *C. Trotter*.—I supposed that lord Melville must have known—

A *Lord*.—I have often heard it said by learned judges, that the thoughts and conceptions of men are not evidence.

Mr. *Whitbread*.—Did you make any communication to lord Melville, of what had passed between you and Mr. Alexander Trotter?

Mr. *C. Trotter*.—I spoke to lord Melville, knowing and feeling that he was acquainted with the circumstance of my having spoken to my brother before.

Mr. *Whitbread*.—Did any thing pass between you and lord Melville, as to what had passed between Mr. Alexander Trotter and you, upon this transaction?

Mr. *C. Trotter*.—The impression upon my mind is, that my brother was fully acquainted with the circumstance of lord Melville wishing to have the money at that time.

Mr. *Whitbread*.—Do you know, from lord Melville's conversation with you, that lord Melville had that knowledge?

Mr. *C. Trotter*.—I certainly think so.

A *Lord*.—Can you recollect what passed between lord Melville and you; or that any thing did pass, as to the nature of the security?

Mr. *C. Trotter*.—I think lord Melville, in that conversation communicated to me the nature of the security he had to propose for the loan, and I left him with the determination of communicating with Mr. *Coutts*, who was finally to decide, whether the loan was to take place or not.

A *Lord*.—What was the nature of the security proposed?

Mr. *C. Trotter*.—An assignment of his lordship's salary as keeper of the signet, an assignment of his lordship's salary as keeper of the privy seal, and also the collateral security of Mr. Robert Dundas, his son.

A *Lord*.—Was that ever carried into effect?

Mr. *C. Trotter*.—It was.

Mr. *Whitbread*.—Did lord Melville, in the course of that conversation, ever express for what particular object he wanted that sum of money?

Mr. *C. Trotter*.—I do not recollect that he did.

Mr. *Whitbread*.—Was there any other security besides those you have mentioned—was there not 2,000*l.* India stock?

Mr. *C. Trotter*.—There was.



*A Lord.*—Repeat again the securities given?

*Mr. C. Trotter.*—The securities given were, first, an assignment of his lordship's salary as keeper of the privy seal; next, an assignment of his salary as keeper of the signet; then the 2,000*l.* India stock, which I had forgotten; and the collateral security of Mr. Robert Dundas, his son.

*A Lord.*—I think you have made a mistake, because I believe lord Melville did not hold those offices at the same time.—Did lord Melville make any assignment of his salary as keeper of the privy seal, and keeper of the signet.

*Mr. C. Trotter.*—They were both joined in the security; one had it in possession, and the other in reversion.

[The witness was directed to withdraw.]

Then *Mr. William Charlton* was again called in, and examined as follows:

*Mr. Whitbread.*—We mean to show that *Mr. Charlton* was the person who paid into the house of Messieurs Coutts the Bank notes which constitute the sum of 13,000*l.* and 19,024*l.* which were proved to be debited to lord Melville's account, on the 24th of May, 1800, and which were paid in to the act of parliament new account.

Then thirty-five cancelled Bank notes, of the following numbers, dates, and sums, were shown to the witness.

|                               |        |
|-------------------------------|--------|
| No. 1581.—14th May 1800 ..... | £.1000 |
| 1889.—8th May 1800 .....      | 1000   |
| 1736.—15th.....               | 1000   |
| 1613.—14th.....               | 1000   |
| 128.—9th.....                 | 1000   |
| 781.—24th April .....         | 1000   |
| 40.—17th May.....             | 1000   |
| 410.—30th April .....         | 1000   |
| 1714.—15th May .....          | 1000   |
| 320.—19th.....                | 1000   |
| 1853.—15th.....               | 1000   |
| 1906.—16th.....               | 1000   |
| 478.—10th.....                | 1000   |
| 6280.—30th April .....        | 20     |
| 1250.—14th May .....          | 1000   |
| 1644.—14th.....               | 1000   |
| 1746.—8th.....                | 1000   |
| 573.—10th.....                | 1000   |
| 498.—30th April .....         | 1000   |
| 799.—1st May .....            | 1000   |
| 168.—28th April .....         | 1000   |
| 1852.—15th May .....          | 1000   |
| 1851.—15th.....               | 1000   |
| 1395.—14th.....               | 1000   |
| 611.—12th.....                | 1000   |
| 612.—12th.....                | 1000   |
| 733.—1st.....                 | 1000   |
| 233.—24th April .....         | 1000   |
| 1696.—13th March.....         | 1000   |
| 1989.—8th May .....           | 1000   |
| 1988.—8th.....                | 1000   |
| 1987.—8th.....                | 1000   |
| 1960.—8th... ..               | 1000   |
| 4737.—24th April .....        | 2      |
| 4736.—24th.....               | 2      |

*Mr. Whitbread.*—Referring to the Bank

notes in your hand, state whether those Bank notes were paid to the draft of lord Melville, drawn upon the act of parliament new account, on the 22nd of May, 1806?

*Mr. Charlton.*—Those notes do not appear to me to be paid into the Bank of England, but to Mr. Alexander Trotter.

*Mr. Whitbread.*—Were they in payment of a draft, drawn by lord Melville on his act of parliament new account?

*Mr. Charlton.*—Those notes were paid for two of Mr. Dundas's drafts to Mr. Alexander Trotter; one was for 13,000*l.* the other 19,024*l.* 12*s.* 6*d.*

*Mr. Whitbread.*—Are those the notes to the amount of 13,000*l.* and 19,024*l.*?

*Mr. Charlton.*—They are numerous. I will look them over.

*Mr. Whitbread.*—Were the notes you have lately had in your hand the notes which you paid Mr. Alexander Trotter, in consequence of the two drafts drawn by lord Melville, (then Mr. Dundas) payable to his act of parliament new account, and placed on the debit side of lord Melville's account with Mr. Coutts?

*Mr. Charlton.*—They are.

Then the following entry in Messieurs Coutts' waste book, referred to by the witness was, read:

Thursday 22nd May, 1800.

|             |                |                    |
|-------------|----------------|--------------------|
| 1000 — —    | 498            | Mr. Alex. Trotter. |
| 1000 — —    | 1581           |                    |
| 1000 — —    | 1889           | £. s. d.           |
| 1000 — —    | 1736           | 13,000 0 0         |
| 1000 — —    | 1613           | 19,024 12 6        |
| 1000 — —    | 128            |                    |
| 1000 — —    | 781            | 32,024 12 6        |
| 1000 — —    | 40             |                    |
| 1000 — —    | 410            | Paid               |
| 1000 — —    | 1714           | Henry Dundas.      |
| 1000 — —    | 320            |                    |
| 1000 — —    | 1853           |                    |
| 1000 — —    | 1906           |                    |
| 1000 — —    | 478            |                    |
| 1000 — —    | 1250           |                    |
| 1000 — —    | 1644           |                    |
| 1000 — —    | 1746           |                    |
| 1000 — —    | 573            |                    |
| 1000 — —    | 799            |                    |
| 1000 — —    | 168            |                    |
| 1000 — —    | 1852           |                    |
| 1000 — —    | 1851           |                    |
| 1000 — —    | 1395           |                    |
| 1000 — —    | 611            |                    |
| 1000 — —    | 612            |                    |
| 1000 — —    | 733            |                    |
| 1000 — —    | 233            |                    |
| 1000 — —    | 1696           |                    |
| 1000 — —    | 1989           |                    |
| 1000 — —    | 1988           |                    |
| 1000 — —    | 1987           |                    |
| 1000 — —    | 1960           |                    |
| 20 — —      | 6280           |                    |
| 4 — —       | 2-2            |                    |
| 12 6        | M <sup>o</sup> |                    |
| 32,024 12 6 |                |                    |



Mr. *Plumer*.—If the witness has the drafts, I wish they may be produced.

Mr. *Whitbread*.—Your lordship recollects that all the vouchers were delivered up to lord Melville.

Mr. *Plumer*.—I wish him to state, as well as he recollects, the import of those two drafts.

Mr. *Whitbread*.—Before that question is put, with submission to the Court, I should wish to ask, as they have had notice to produce those drafts, and we have proved that they were delivered up, whether they are not bound to produce those drafts, or show that they were destroyed, before they can put a question upon them.

Lord *Chancellor*.—Were those drafts and vouchers delivered up to lord Melville?

Mr. *Whitbread*.—Mr. Antrobus has proved that fact.

Mr. *Plumer*.—The honourable manager is under a mistake in supposing that we are bound to produce them. The non-production of them after they have given us notice, I do not dispute entitles them to give parol evidence of their contents, which they have done. All I wish is, that in speaking of their contents the witness would describe the contents of those drafts, as well as he can recollect.

Mr. *Charlton*.—I can only speak from the waste-book before me that those drafts were drawn. In the waste-book it is thus entered: "Mr. Alexander Trotter, 13,000*l*. The right honourable Henry Dundas 19,024*l*. 12*s*. 6*d*. paid ditto; amounting to 32,024*l*. 12*s*. 6*d*."

Mr. *Plumer*.—Is that the whole entry?

Mr. *Charlton*.—That is the debit side.

Mr. *Whitbread*.—I apprehend it is in evidence before your lordships, from the entry read by Mr. Chapman, that these were drawn on the act of parliament new account; we have now shown by Mr. Charlton, that these drafts so drawn by lord Melville, the produce of them were paid in those specific Bank notes to Mr. Alexander Trotter; the Commons now intend to trace those notes to the Bank of England, and to show that they were paid into the Bank of England, and placed to the credit of that specific act of parliament new account.

Mr. *Plumer*.—I wish that the evidence of this gentleman, and what he knows, should be kept distinct from what has been proved by any other witness. I wish only to know whether the witness takes upon himself to speak respecting the drafts, on account of which those notes were paid. Is there any mention in the entry of any drafts? Can you speak of the drafts for which these notes were paid?

Mr. *Charlton*.—I cannot.

[The witness was directed to withdraw.]

Then Mr. *John Taylor*, was called in, and being sworn was examined as follows:

Mr. *Whitbread*.—Are you a clerk in the Bank of England?

Mr. *Taylor*.—I am.

Mr. *Whitbread*.—Were you a clerk in the

Bank of England, previous to the month of May, 1800?

Mr. *Taylor*.—Yes.

Mr. *Whitbread*.—As clerk of the Bank of England, did you ever receive in payment the cancelled Bank notes, now put into your hand?

Mr. *Taylor*.—Yes; I did.

Mr. *Whitbread*.—From whom did you receive those notes in payment?

Mr. *Taylor*.—I cannot tell.

Mr. *Whitbread*.—To what credit did you carry those notes?

Mr. *Taylor*.—To the account of the right honourable Henry Dundas; the act of parliament new account.

Mr. *Whitbread*.—What is the amount of the notes in your hand?

Mr. *Taylor*.—19,024*l*. 12*s*. 6*d*.

Mr. *Whitbread*.—Look at this other parcel of notes. Did you, as a clerk of the Bank of England, receive also those notes?

Mr. *Taylor*.—I did.

Mr. *Whitbread*.—To what account did you carry the amount of those notes?

Mr. *Taylor*.—To the right honourable Henry Dundas' act of parliament account.

Mr. *Whitbread*.—Do you know that those were carried to the act of parliament new account also?

Mr. *Taylor*.—I think they are, but there is a bit stamped out of the note.

Mr. *Whitbread*.—When notes are cancelled, is there not a stamp driven through them, to prevent their being re-issued?

Mr. *Taylor*.—There is.

Lord *Chancellor*.—Notwithstanding that stamp, is it sufficiently legible for you to say that they are so?

Mr. *Taylor*.—Yes.

Mr. *Whitbread*.—What is the amount of the notes you now have in your hands?

Mr. *Taylor*.—13,000*l*.

Then Mr. *John Taylor* was cross-examined as follows:

Mr. *Plumer*.—Upon what occasion is it, that you stamp pieces out of notes?

Mr. *Taylor*.—To cancel them, that they may not go out again, a hollow stamp is struck through them.

Mr. *Plumer*.—Is it the course, when bank-notes are paid into the Bank, on account of the act of parliament new account, for them to be immediately cancelled?

Mr. *Taylor*.—Yes, after being entered in the cash book.

Mr. *Plumer*.—If Bank-notes to the amount of many thousands, are paid into the Bank, it is the course, after being entered, that they should be cancelled?

Mr. *Taylor*.—Yes, always.

Mr. *Plumer*.—Then whether they are issued from the Exchequer or brought by the paymaster to any amount, as soon as they are brought, the practice is to enter and cancel them.



Mr. Taylor.—It is; come from where they will.

[The witness was directed to withdraw.]

Then Mr. Henry Whiting was called in, and, being sworn, was examined as follows:

Mr. Whitbread.—Are you a clerk in the Bank of England?

Mr. Whiting.—I am.

Mr. Whitbread.—Were you so in May 1800?

Mr. Whiting.—I was.

Mr. Whitbread.—Is any part of that book in your hand-writing?

Mr. Whiting.—It is.

Mr. Whitbread.—What is that book?

Mr. Whiting.—It is the book of the right honourable Henry Dundas' act of parliament new account.

Mr. Whitbread.—Is there an entry of the 22nd of May, 1800, of 19,024*l.* 12*s.* 6*d.*

Mr. Whiting.—There is.

Mr. Whitbread.—Do you know in what manner that payment was made?

Mr. Whiting.—It mentions here, sundries, signifying bank-notes and other articles, I presume.

Mr. Whitbread.—We have proved that those Bank-notes were received at the Bank of England for that entry, and there was 12*s.* 6*d.* in fact in money. Turn to the next entry.

Mr. Whiting.—The next entry is 13,000*l.* Bank-notes paid to this account.

Mr. Whitbread.—In what effects?

Mr. Whiting.—In Bank-notes.

[The witness was directed to withdraw.]

Mr. Whitbread.—We propose now to show, in order to follow this up, the entry in the Bank cash-book of these identical notes.

Then Mr. John Hadfield was called in, and, being sworn, was examined as follows:

Mr. Whitbread.—Were you a clerk in the Bank of England, in the month of May, 1800?

Mr. Hadfield.—I was.

Mr. Whitbread.—What is the book that lies before you?

Mr. Hadfield.—A book called the cash-book, in which we keep the notes received from the different offices.

Mr. Whitbread.—Is any part of that book in your hand writing?

Mr. Hadfield.—It is.

Mr. Whitbread.—Whether the entry now before you of the 22nd of May, 1800, is in your hand-writing?

Mr. Hadfield.—It is.

Mr. Whitbread.—Refer to the 22nd of May, 1800; what sum do you find entered there?

Mr. Hadfield.—19,020*l.* to the credit of Henry Dundas.

Mr. Whitbread.—On what account?

Mr. Hadfield.—We do not take any notice of that in this book.

Mr. Whitbread.—Whether, with the exception of 4*l.*, the notes just put into your hand correspond with the sum contained in that entry?

Mr. Hadfield.—They do.

Mr. Whitbread.—Is it the custom of the Bank of England to enter the one pound notes, in the entries such as you have described?

Mr. Hadfield.—Yes, but not in the same books.

Mr. Whitbread.—We cannot prove the entry of the four one pound Bank-notes, because the man who made the entry is unhappily in a state of mental derangement. Turn to an entry of the same day, and see if there is an entry of 13,000*l.*?

Mr. Hadfield.—There is.

Mr. Whitbread.—Do the notes which you hold in your hand correspond with that entry, and were they paid on that account?

Mr. Hadfield.—They do.

Mr. Whitbread.—Were those notes also carried to the account of the right honourable Henry Dundas?

Mr. Hadfield.—They were.

Then the following entries in the Bank cash-book, referred to by the witness, were read:

22nd May, 1800.

|               |                   |      |     |        |
|---------------|-------------------|------|-----|--------|
| 13,000 Dundas | Newland, 14th May | 1581 | ... | £.1000 |
|               | 8th               | 1889 | ... | 1000   |
|               | 15th              | 1736 | ... | 1000   |
|               | 14th              | 1613 | ... | 1000   |
|               | 9th               | 128  | ... | 1000   |
|               | 24th April        | 781  | ... | 1000   |
|               | 17th May          | 40   | ..  | 1000   |
|               | 30th April        | 410  | ... | 1000   |
|               | 15th May          | 1714 | ... | 1000   |
|               | 19th              | 320  | ... | 1000   |
|               | 15th              | 1853 | ... | 1000   |
|               | 16th              | 1806 | ... | 1000   |
|               | 10th              | 478  | ... | 1000   |

22nd of May, 1800.

|                |                     |      |     |       |
|----------------|---------------------|------|-----|-------|
| 19,020 Dundas. | Newland, 30th April | 6280 | ... | £. 20 |
|                | 14th May            | 1250 | ... | 1000  |
|                | —                   | 1644 | ... | 1000  |
|                | 8th                 | 1746 | ... | 1000  |
|                | 10th                | 573  | ..  | 1000  |
|                | 30th April          | 498  | ... | 1000  |
|                | 1st May             | 799  | ... | 1000  |
|                | 28th April          | 168  | ... | 1000  |
|                | 15th May            | 1852 | ... | 1000  |
|                | —                   | 1851 | ... | 1000  |
|                | 14th                | 1395 | ... | 1000  |
|                | 12th                | 611  | ... | 1000  |
|                | —                   | 612  | ..  | 1000  |
|                | 1st                 | 733  | ... | 1000  |
|                | 24th April          | 233  | ... | 1000  |
|                | 13th March          | 1696 | ... | 1000  |
|                | 8th May             | 1989 | ... | 1000  |
|                | —                   | 1988 | ... | 1000  |
|                | —                   | 1987 | ... | 1000  |
|                | —                   | 1960 | ... | 1000  |

[The witness was directed to withdraw.]

Mr. Whitbread.—We wish now to prove



that Brabb, who made the entry of the four single pound notes, is in a state of mental derangement.

Then Mr. *Thomas Rippon* was again called in, and examined as follows:

Mr. *Whitbread*.—Are you acquainted with Mr. Brabb, formerly a clerk in the Bank?

Mr. *Rippon*.—I was.

Mr. *Whitbread*.—Do you know any thing of the state of Mr. Brabb's health?

Mr. *Rippon*.—From report I know he is at present in St. Luke's hospital.

Mr. *Whitbread*.—At what hour do payments cease at the Bank of England?

Mr. *Rippon*.—In regard to cash accounts, at five o'clock.

Mr. *Whitbread*.—What is the book now in your hand?

Mr. *Rippon*.—It is the Bank book of the right honourable Henry Dundas' act of parliament new account for the year 1800.

Mr. *Whitbread*.—Refer to an entry of June the 2nd, 1800, and see whether the entry of 5,333*l.* is your own hand-writing?

Mr. *Rippon*.—It is; "1800, June 2nd, Henry Dundas, Old Account, 5,333*l.* 8*s.* 4*d.*"

Mr. *Whitbread*.—Does that entry purport that that sum was brought from Mr. Dundas's old account at the Bank to the new one?

Mr. *Rippon*.—It purports to be a draft from the old account to this account.

Mr. *Whitbread*.—By whom drawn?

Mr. *Rippon*.—This book does not show.

Mr. *Whitbread*.—Is it a credit, carried from the old to the new account?

Mr. *Rippon*.—Undoubtedly.

Mr. *Whitbread*.—We now propose to produce before your lordships a book which has been in evidence, and we wish to have read an entry on the 2nd of June, 1800, on the debit side of that account.

Then the following entry was read from a book, before delivered in, entitled

"Old Account 1784.—1800, June 2nd, To myself, 5,333*l.* 8*s.* 4*d.*"

Mr. *Whitbread*.—We will now show your lordships, that the public cash at the Bank was transferred by lord Melville to his successor on the 2nd of June, 1800. Do you find an entry in the right honourable Dudley Ryder's account at the Bank, as treasurer of the navy of a transfer to that account, from the right honorable Henry Dundas.

Mr. *Rippon*.—It appears by this book, by an entry dated the 2nd of June, 1800, that there was a draft from the right honourable Henry Dundas, act of parliament new account, 337,779*l.* 9*s.* 10*d.*

Mr. *Whitbread*.—Read from this book the debit to the right honorable Henry Dundas, to the same amount.

Mr. *Rippon*.—There appears in this book a debit on the 2nd of June, 1800, of the same sum as before, as a balance, transferred from the right honorable Henry Dundas, act of par-

liament new account, to the right honorable Dudley Ryder.

Mr. *Whitbread*.—Refer to a payment made on the 3rd of June.

Mr. *Rippon*.—By this book it appears, that on the 3rd of June, 1800, there is a credit of the right honorable Dudley Ryder, of 31,510*l.* 12*s.* 2*d.* and also, on the 6th of the same month, a credit of 54,288*l.* 4*s.* 6*d.*

Mr. *Whitbread*.—Making the total balance transferred—how much?

Mr. *Rippon*.—The amount of the three sums I have read is, 423,578*l.* 6*s.* 6*d.*

Mr. *Whitbread*.—I wish to show your lordships, that that sum was actually paid out of Mr. Dundas's account, making the whole aggregate balance.—Look at the entry of the 6th of June, in that book.

Mr. *Rippon*.—Right honorable Henry Dundas, act of parliament new account. There are two dates in 1800. June the 6th, one by Ryder, 34,510*l.* 12*s.* 2*d.* and another entry, 54,286*l.* 4*s.* 6*d.*

Mr. *Whitbread*.—That makes up the whole transfer to Mr. Ryder.

Mr. *Plumer*.—I will take it now as it stood on the 6th of June, 1800. I wish to know whether that comprehended every shilling that was due from lord Melville to the public at that time, which was made over by lord Melville to his successor?

Mr. *Rippon*.—That appears to be the balance of the book at that time.

Mr. *Whitbread*.—19,000*l.* and 13,000*l.* were paid from the house of Messieurs Coutts, from a draft, as stated, into the Bank of England, and there was a transfer from lord Melville's old account to the new account of 5,333*l.* We now propose to show your lordships, that that balance, with the diminutions that had taken place between June, 1800, and July, 1805, remained in lord Melville's hands, and was paid to the Auditor's office in July, 1805.

Then Mr. *William Chapman* was again called in, and examined as follows:

Mr. *Whitbread*.—This is lord Melville's signed account. Refer to an entry on the debit side of lord Melville's account, of the 27th of July, 1805, and read that entry.

Mr. *Chapman*.—July 27th, 1805, to the Exchequer, on account of your lordship's first treasurership of the navy, ending the 10th of April, 1783; imprest money received 5,111*l.* 2*s.* 9*d.*: bill money and porters, 3*s.* 6*d.* making together 5,111*l.* 6*s.* 3*d.*

[The witness was directed to withdraw.]

Mr. *Whitbread*.—Now we will show that this money was actually paid in, on lord Melville's account, at the Exchequer.

Then Mr. *Bernard Cobbe* was again called in, and examined as follows:

Mr. *Whitbread*.—What is the book you have before you?

Mr. *Cobbe*.—The book of account of the



right honorable Henry Dundas,—lord Melville, first treasurership, navy and victualling account, 1783, and final.

Mr. Whitbread.—Does that contain the final account of lord Melville, as to his first treasurership?

Mr. Cobbe.—It does.

Mr. Whitbread.—Are those accounts signed and properly passed in that office?

Mr. Cobbe.—They are.

Mr. Whitbread.—Turn to an entry of the 27th of July, 1805, and read the entry in the discharge of lord Melville, as signed by himself, relative to the balance that was paid in.

Mr. Cobbe.—Balance remaining to be accounted for, amounts to the sum of 5,111*l.* 2*s.* 9½*d.*

Mr. Whitbread.—Does that form the final balance of the treasurership so paid in?

Mr. Cobbe.—It does.

Mr. Whitbread.—Do you know, of your own knowledge, the day on which this sum was paid in?

Mr. Cobbe.—I believe it was paid in on the 27th of July, 1805.

Then Mr. Bernard Cobbe was cross-examined as follows:

Mr. Plumer.—When was that account declared?

Mr. Cobbe.—It was declared in October, 1805.

Mr. Plumer.—When was it audited?

Mr. Cobbe.—In June, 1805.

Mr. Plumer.—Audited in June, and not declared till October, 1805?

Mr. Cobbe.—Yes.

Mr. Plumer.—Is it usual to grant an accountant his quietus, until his account is declared?

Mr. Cobbe.—He cannot have his quietus until the account is declared.

Mr. Plumer.—Was the whole of the balance, due from lord Melville, paid by his lordship, even before the balance had been declared?

Mr. Cobbe.—It was.

Mr. Plumer.—Could that balance due from the ex-treasurership, have been paid in any where, prior to the settlement of these accounts?

Mr. Cobbe.—It sometimes happens that accountants pay in their acknowledged balance, what they acknowledge themselves, but that balance sometimes differs from the balance audited and declared.

Mr. Plumer.—But the balance actually due from the accountant, is not settled till the account is audited, is it?

Mr. Cobbe.—Certainly not.

Mr. Plumer.—I wish to know if the actual balance due upon that open account of lord Melville's first treasurership had ever been ascertained or audited prior to that time?

Mr. Cobbe.—No, it had not.

Mr. Plumer.—Whether prior to its being paid in, the balance that remains in the hand of an ex-treasurer is liable to any assignments that may be outstanding?

Mr. Cobbe.—It is generally conceived that the balance when paid in has no assignment upon it.

Mr. Plumer.—Prior to its being paid in, is the balance in the hands of the ex-treasurer subject to any assignment that may be upon that balance?

Mr. Cobbe.—That I cannot say.

Then the account was delivered in, and is as follows:

GENERAL STATE of the ACCOUNT of the Right Honourable HENRY Viscount MELVILLE, Treasurer of his Majesty's Navy and the Victualling thereof, from the 1st Day of January to the 10th Day of April 1783, (when he quitted that Office) and of Money received and paid by him from that time to the 31st Day of December, 1804; viz.

| THE CHARGE.                                                                    | £.        | s. | d. |
|--------------------------------------------------------------------------------|-----------|----|----|
| To Balance remaining in this Accountant's Hands, the 31st December, 1782 ..... | 945,275   | 19 | 5½ |
| Received from the Exchequer .....                                              | 1,517,164 | 6  | 6  |
| Received on Account of the Navy.....                                           | 672,684   | 8  | 10 |
| Received on Account of the Victualling .....                                   | 242,674   | 10 | 8½ |
|                                                                                | 3,377,799 | 5  | 6½ |

| THE DISCHARGE.                                                                                                                                       | £.        | s. | d. |
|------------------------------------------------------------------------------------------------------------------------------------------------------|-----------|----|----|
| By paid on Account of the Navy .....                                                                                                                 | 2,597,479 | 10 | 8  |
| Paid on Account of the Victualling .....                                                                                                             | 775,208   | 12 | 1¼ |
|                                                                                                                                                      | 3,372,688 | 2  | 9½ |
| Balance remaining to be accounted for, amounts to the Sum of Five Thousand One Hundred and Eleven Pounds Two Shillings and Nine-pence Farthing ..... | 5,111     | 2  | 9½ |
|                                                                                                                                                      | 3,377,799 | 5  | 6½ |

The Right Honorable HENRY Viscount MELVILLE, late Treasurer of His Majesty's Navy, declares upon his Honor, the above Account to be just and true, to the best of his Knowledge and Belief.

MELVILLE.

Before AR. MACDONALD, Chief Baron, the Thirtieth Day of January, 1805.



[The witness was directed to withdraw.]

Mr. *Whitbread*.—For the sake of regularity I believe it will be necessary that the sums and numbers of the Bank-notes which have been put in should be entered upon your lordships' minutes; we put them in for that purpose.—Here we leave this part of the case, and the Commons proceed to the proof of the advance made for the purchasing India stock; meaning hereafter to resume the evidence as to the 2,000*l.* India stock, and 1,000*l.* India stock; the 2,000*l.* which appears according to the evidence to be at present in the hands of lord Melville, and 1,000*l.* sold in May, 1800.

Then *Coutts Trotter*, esquire, was again called in, and examined as follows:

A Lord.—Having stated that you had a conversation with lord Melville, from which you collected that his lordship intended to borrow 13,000*l.* but that from certain circumstances which have occurred since that time, you take it only to have been intended to have borrowed 10,000*l.* State any circumstance which has occurred since that time, to alter any recollection you before expressed upon that subject.

Mr. *C. Trotter*.—The difference as to the sum to which I alluded was, that I in the first instance conceived it to have been a loan of 13,000*l.*, till upon an examination before the honourable managers, an inquiry was made of me, whether it was not originally 10,000*l.*, and that circumstance brought it to my recollection that it might have been so, although I cannot positively say that it was.

[The witness was directed to withdraw.]

Mr. Sergeant *Best*.—Your lordships will recollect, Mr. Trotter stated that lord Melville had been desirous of becoming the possessor of some India stock, and that he had directed him to make a purchase of India stock. Your lordships will also recollect, Mr. Trotter stated, that he had directed India stock to be purchased. The Commons now propose to prove to your lordships the purchase of that India stock, to the amount of 12,000*l.* They will prove that by Mr. Antrobus, the person who purchased it; they will prove it continued in the name of Mr. Antrobus, from the time when it was first purchased in 1790 to 1791; that in the year 1791, that 12,000*l.* was transferred from the name of Mr. Antrobus to the name of Mr. Montague Lind; that it continued in his name some short time, and was then transferred to a brother of Mr. Montague Lind of the name of Francis Lind, in whose name it continued for a few weeks only.

Mr. Montague Lind is dead, but we shall call Mr. Francis Lind, and he will state that he was merely trustee of that stock; that it was by him conveyed back to Mr. Montague Lind, and from him to Mr. Coutts; by Mr. Coutts it was sold, and the proceeds of that stock amounting to 28,333*l.* 2*s.* 6*d.* together

with 4,410*l.* the proceeds of the 7,000*l.* 3 per cents of which your lordships have also had evidence, amounting altogether to 32,743*l.* 2*s.* 6*d.* were paid to lord Melville, and by lord Melville paid into the Bank of England, in the year 1800, in discharge of a part of the 50,000*l.* which your lordships have also in evidence he then stood indebted to the public. I propose to call Mr. Philip Antrobus.

Then *Philip Antrobus*, esquire, was called in, and, being sworn, was examined as follows:

Mr. Sergeant *Best*.—Are you a stock-broker?

Mr. *P. Antrobus*.—I am.

Mr. Sergeant *Best*.—Did you, on the 27th of August, 1789, purchase for Mr. Alexander Trotter any India stock?

Mr. *P. Antrobus*.—In August 1789, I bought 6,000*l.* East India stock, by order of Messieurs Coutts and Company.

Mr. Sergeant *Best*.—In whose name was that stock purchased and placed?

Mr. *P. Antrobus*.—In my own name.

Mr. Sergeant *Best*.—Did you, on the 27th of May 1790, purchase any more India stock by the order of Messieurs Coutts and Company?

Mr. *P. Antrobus*.—Upon the 27th of May, I purchased 6,000*l.* more India stock.

Mr. Sergeant *Best*.—In whose name was that stock placed?

Mr. *P. Antrobus*.—In my own name.

Mr. Sergeant *Best*.—What was the cost of the two, the 6,000*l.* and the 6,000*l.* India stock?

Mr. *P. Antrobus*.—The first 6,000*l.* was 10,507*l.* 10*s.*—the second 6,000*l.* was 9,302*l.* 10*s.*

Mr. Sergeant *Best*.—Does that make together 19,810*l.*?

Mr. *P. Antrobus*.—It does.

Mr. Sergeant *Best*.—Did you give Mr. Trotter any memorandum on account of this stock?

Mr. *P. Antrobus*.—I did.

Mr. Sergeant *Best*.—What was that memorandum?

Mr. *P. Antrobus*.—It was acknowledging that I held the stock, in trust, for Mr. Trotter, and that I engaged to transfer it upon demand.

Mr. Sergeant *Best*.—To whom did you pay the dividends arising upon this stock?

Mr. *P. Antrobus*.—To Mr. Trotter, or upon his account, at his banker's.

Mr. Sergeant *Best*.—Do you know when you transferred this stock?

Mr. *P. Antrobus*.—About a twelvemonth from the last purchase, I think.

Mr. Sergeant *Best*.—To whom was it transferred?

Mr. *P. Antrobus*.—To Mr. Montague Lind. Then *Philip Antrobus*, esquire, was cross-examined as follows:

Mr. *Plumer*.—Do you speak of this being



transferred to Mr. Montague Lind, from your own recollection of it?

Mr. *P. Antrobus*.—Yes.

Mr. *Plumer*.—In about a twelvemonth after the original purchase?

Mr. *P. Antrobus*.—About a twelvemonth after the last purchase.

[The witness was directed to withdraw.]

Then Mr. *John Hatfield Kennedy* was called in, and being sworn, was examined as follows:

Mr. Sergeant *Best*.—Are you a clerk in the Transfer-office, in the India-house?

Mr. *Kennedy*.—I am.

Mr. Sergeant *Best*.—Look at that account --- is that a copy of the East-India Company's transfer ledger?

Mr. *Kennedy*.—It is.

Mr. Sergeant *Best*.—Read an entry of the 1st of June, of a transfer of 12,000*l.* by Mr. *Antrobus* to Mr. *Lind*.

Mr. *Kennedy*.—"1st of June 1791, by Philip *Antrobus* 12,000*l.*"

Mr. Sergeant *Best*.—Does it appear there to whose credit it is transferred?

Mr. *Kennedy*.—It does not appear here.

Mr. Sergeant *Best*.—Does it appear from what lies before you, that there was the sum of 12,000*l.* transferred from Mr. *Antrobus*?

Mr. *Kennedy*.—There was a transfer on the 1st of June, 1791, from Mr. Philip *Antrobus* to Mr. Montague *Lind*, of 12,000*l.*

Mr. Sergeant *Best*.—Look at the same paper, and see if 1,000*l.* does not appear to be transferred from Mr. Montague *Lind* to the right honourable Henry Dundas?

Mr. *Kennedy*.—On the 23rd of February 1791, there appears to be 1,000*l.* transferred to the right honourable Henry Dundas.

Mr. Sergeant *Best*.—Does that 1,000*l.* appear to be transferred from this particular stock of Mr. Montague *Lind*?

Mr. *Kennedy*.—It does not appear from what particular account, except from Mr. Montague *Lind*.

Mr. Sergeant *Best*.—Is there any other stock from which it could be transferred in the name of Montague *Lind*?

Mr. *Kennedy*.—Not on that day.

Mr. Sergeant *Best*.—Then must it not be transferred from that stock?

Mr. *Kennedy*.—Yes, it appears to be part of the 12,000*l.* that stood in the name of Montague *Lind*.

Mr. Sergeant *Best*.—That reduces the 12,000*l.* to 11,000*l.*—I now propose to read another entry, showing the transfer of that 11,000*l.* from Montague *Lind* to Francis *Lind*.—Turn to an entry of the 17th January 1793?

Mr. *Kennedy*.—On that day there appears to be a transfer of 11,000*l.* to Francis *Lind* from Montague *Lind*.

Mr. Sergeant *Best*.—I am now about to show that the 11,000*l.* with 2,000*l.* was trans-

ferred back again from Francis *Lind* to Montague *Lind* on the 29th January, 1793.

Look at that paper, is that an examined copy of the transfer book of the India company?

Mr. *Kennedy*.—Of the ledger of the East India company.

Mr. Sergeant *Best*.—Turn to an entry of the 29th of January, 1793.

Mr. *Kennedy*.—On that day there appears to be a transfer of 13,000*l.* from the name of Francis *Lind* to Montague *Lind*.

[The witness was directed to withdraw.]

Mr. Sergeant *Best*.—I now propose to call Mr. Francis *Lind*, to show that he only held the stock in trust.

Then Mr. *Francis Lind* was called in, and being sworn, was examined as follows:

Mr. Sergeant *Best*.—Was the 13,000*l.* stock, which appears to have stood in your name, your own property, or did you only stand as a trustee?

Mr. *Lind*.—To the best of my knowledge and belief, I never was told to whom this stock belonged.

Mr. Sergeant *Best*.—Had you any property in that stock yourself?

Mr. *Lind*.—Not in the least.

Mr. Sergeant *Best*.—Do you know at whose disposal you held that stock?

Mr. *Lind*.—I do not know.

Mr. Sergeant *Best*.—Do you know any thing of a transfer back again from you of that stock, that was standing in your name?

Mr. *Lind*.—I have not the least recollection of the circumstance.

A Lord.—This stock was transferred from the name of Montague *Lind* to your name, were you at that time made acquainted with that transaction?

Mr. *Lind*.—To the best of my knowledge I was not.

A Lord.—When did you first learn that the transfer had been made from the name of Montague *Lind* to your own name?

Mr. *Lind*.—I have but a faint recollection of the circumstance; to the best of my remembrance, I either met my brother at the India-house or accompanied him there. He told me he was going to make a transfer of India stock; I asked him on what account; he said, merely to disqualify himself, not to be plagued with candidates at the election.—I said, I am similarly circumstanced, and I am plagued, why should not you?—He said, because it is not my own stock, but he never informed me, to the best of my belief, to whom the stock belonged, and I never asked him the question.

A Lord.—When you transferred the stock out of your own name, back again to Montague *Lind*, upon whose application did you do so?

Mr. *Lind*.—I had really no recollection of the circumstance; till this account was pro-



duced to me I did not recollect any part of the subject.—Had I conceived it would ever be the subject of investigation I should certainly have endeavoured to impress the recollection of it upon my mind.

*A Lord.*—Did you go in person to transfer it?

*Mr. Lind.*—I must of course, if I did transfer it; but I do not recollect that I did.

*A Lord.*—Have you any knowledge whatever who was the owner of the stock for whom you held it in trust?

*Mr. Lind.*—No knowledge whatever.

*A Lord.*—But you know it was not your brother?

*Mr. Lind.*—Yes, perfectly so. I mean, I do not know that it was my brother's.

*A Lord.*—Do you know any thing at all about who was the owner of the stock, except from the conversation you stated you had with your brother, Montague Lind?

*Mr. Lind.*—No other; and he did not then tell me to whom the stock belonged.

[The witness was directed to withdraw.]

Then *Mr. John Hatfield Kennedy* was again called in, and examined as follows:

*Mr. Sergeant Best.*—Turn to an entry on the first December, 1795?

*Mr. Kennedy.*—There appears to be a transfer from the name of Montague Lind, of 13,500*l.* to Thomas Coutts and Company.

*Mr. Sergeant Best.*—Now turn to an entry of the 26th of February, 1801.

*Mr. Kennedy.*—There appears to be a transfer from the names of Thomas Coutts, Edmund Antrobus, and Coutts Trotter, esquires, of 5,500*l.* to the name of Eliezer Philip Solomons.

*Mr. Sergeant Best.*—Turn to the 25th of November, 1802.

*Mr. Kennedy.*—There appears a transfer of 8,000*l.* from the same account to Mark Sprot.

*Mr. Sergeant Best.*—Does not that close the account of 13,500*l.*?

*Mr. Kennedy.*—It makes up the amount.

[The witness was directed to withdraw.]

Then *Edmund Antrobus*, esq. was again called in, and examined as follows:

*Mr. Sergeant Best.*—Turn to Mr. Trotter's signed account of the 21st of May, 1800.

*Mr. E. Antrobus.*—"May 21st, 1800, of Mark Sprot, esquire, the produce of 13,500*l.* India stock, 28,333*l.* 2*s.* 6*d.*—to 7,000*l.* reduced annuities 4,410*l.* sold by him, and transferred by us from our names."—But this alludes only to the 7,000*l.* the reduced being transferred.

*Mr. Sergeant Best.*—Whether those two sums, 28,333*l.* 2*s.* 6*d.* and 4,410*l.* make 32,743*l.* 2*s.* 6*d.*?

*Mr. E. Antrobus.*—They do.

*Mr. Sergeant Best.*—Turn now to the debit side of the same account to the 22nd of May. Do you see from thence how this money was disposed of?

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*Mr. E. Antrobus.*—I cannot.

*Mr. Sergeant Best.*—Do you find there a sum of 20,000*l.*?

*Mr. E. Antrobus.*—I do not find any such sum.

*Mr. Sergeant Best.*—Do you find a sum of 12,743*l.* 2*s.* 6*d.*?

*Mr. E. Antrobus.*—Not of that date.

*Mr. Sergeant Best.*—Do you find any such sum upon the 24th of May?

*Mr. E. Antrobus.*—Yes, 12,743*l.* 2*s.* 6*d.*

*Mr. Sergeant Best.*—To whom is that sum entered?

*Mr. E. Antrobus.*—To the right honourable Henry Dundas.

*Mr. Plumer.*—Did both these stocks stand in the name of you and your partners?

*Mr. E. Antrobus.*—The India stock stood in the name of Mr. Coutts, myself, and Mr. Coutts Trotter; the 7,000*l.* reduced, stood in Mr. Coutts's own name.

*Mr. Plumer.*—Did these several stocks, or either of them, belong to the house of Mr. Coutts? or were they trustees, and for whom?

*Mr. E. Antrobus.*—The stock certainly did not belong to us, or to any of the partners; but it belonged to Mr. Alexander Trotter.

*Mr. Plumer.*—Was he credited by your house with the dividends?

*Mr. E. Antrobus.*—He was.

*Mr. Plumer.*—Were those stocks under his control?

*Mr. E. Antrobus.*—Yes, absolutely.

*Mr. Plumer.*—Do you know of any other stocks that were also under the control of Mr. Alexander Trotter. Did not the 10,000*l.* loyalty loan stand in the same predicament?

*Mr. E. Antrobus.*—The 10,000*l.* loyalty loan stood in the name of Mr. Henry Dundas; we had an order from Mr. Trotter, to sell the stock, and to hold it at the disposal of Mr. Trotter.

*Mr. Plumer.*—At what time?

*Mr. E. Antrobus.*—I must request permission to look at the order itself. (The witness referred to the order.) This order is dated 28th September, 1797.

The same was read, and is as follows:

"Messrs. Thomas Coutts and co. I have executed powers of attorney in your favour, to enable you to receive the dividends, and likewise for the sale of consolidated 3 per cents, reduced 3 per cents, and 5 per cents, 1797, standing in my name at the Bank; also for my India stock: and I desire that the dividends you will from time to time receive on these funds, may be placed to the credit of Alexander Trotter's account; and that you will take any directions he may at any time give respecting the sale of all, or any part, of those stocks, and apply the produce in any manner he may direct, for which this is your authority.

"HENRY DUNDAS.

"Somerset place, 28th September, 1797."



Mr. *Plumer*.—Do you know what is the amount of the stocks, referred to in that order?

Mr. *E. Antrobus*.—I cannot speak from recollection.

Mr. *Plumer*.—Can you, by reference to any books, ascertain that fact? Are those the same stocks, for the dividends on which you gave credit to lord Melville?

Mr. *Sergeant Best*.—It has been proved by Mr. Trotter, that lord Melville had credit for the dividends upon all these stocks.

Mr. *Plumer*.—Perhaps by referring to Mr. Trotter's account, you may be able to state what these stocks were?

Mr. *E. Antrobus*.—I cannot by referring to any book whatever tell, as the sums are not particularly expressed; but I can see the sums of both stocks that stood in lord Melville's name, the credit of which we placed to Mr. Trotter's order; but the sums are not stated.

Mr. *Plumer*.—Were the dividends, subsequent to the time of that order, carried to the credit of Mr. Alexander Trotter?

Mr. *E. Antrobus*.—They were.

Mr. *Plumer*.—By referring to that account of Mr. Trotter's, you would be able to state what the dividends were, and, of course, what the stocks were?

Mr. *E. Antrobus*.—There appears to have been carried to the credit of Mr. Trotter's account a dividend upon 8,433*l.* 14*s.* 11*d.* reduced 3 per cents, in Mr. Dundas's name,—upon 11,250*l.* 5 per cents, 1797, in Mr. Dundas's name.—and 3,566*l.* 5*s.* 1*d.* consols in Mr. Dundas's name. The dividend upon 1,000*l.* India stock, I think, we must have placed to Mr. Dundas's own account.

Mr. *Plumer*.—Turn to an entry in Mr. Trotter's account of January 1798. To whose credit are the dividends upon the India stock carried?

Mr. *E. Antrobus*.—There are two sums of India stock in Mr. Trotter's account that day; the Christmas dividend upon 6,680*l.* India stock, which from an entry I conclude stood in the name of Alexander Trotter, and a similar dividend upon 13,500*l.* which stood in the name of Mr. Coutts, myself, and Mr. Coutts Trotter.

Mr. *Plumer*.—To whose credit are the dividends of both those carried?

Mr. *E. Antrobus*.—To Mr. Alexander Trotter's.

Mr. *Plumer*.—Read the next entry on the same day?

Mr. *E. Antrobus*.—The Christmas dividend on 4,178*l.* 7*s.* India stock, in the right honourable Henry Dundas's name, is also carried to the credit of Mr. Alexander Trotter.

Mr. *Plumer*.—Was there, to your knowledge or belief, any other stock belonging to lord Melville?

Mr. *E. Antrobus*.—There was not.

Mr. *Plumer*.—Were the dividends of all those carried to the account and credit of Mr. Trotter?

Mr. *E. Antrobus*.—The dividends of all those were carried to the account of Mr. Trotter. I do not know whether it would not be proper for me to state here, in explanation of what I have just said, with regard to the whole of this stock, that I have, since this matter became a subject of public investigation, reflected a good deal upon it, and have some recollection that Mr. Trotter once told me that the capital of this India stock—

Mr. *Plumer*.—Any thing that Mr. Trotter told the witness is not evidence, certainly.

[The witness was directed to withdraw.]

Then Mr. *Francis Lind* was again called in, and examined as follows:

A *Lord*.—Did any dividend become payable upon this 13,000*l.* stock, whilst the stock stood in your name?

Mr. *Lind*.—It appears, by the account, that the re-transfer was made in the course of a very few days after the transfer.

Lord *Chancellor*.—Do you know any thing about the stock?

Mr. *Lind*.—I do not.

Lord *Chancellor*.—Was there any dividend that you know any thing about while it stood in your name?

Mr. *Lind*.—Not any.

[The witness was directed to withdraw.]

Mr. *Sergeant Best*.—It appears by the books it stood only twelve days in Mr. Lind's name. Your lordships find, by the evidence, that the proceeds of these two sums amount to 32,743*l.* 2*s.* 6*d.* Your lordships recollect that Mr. Trotter stated that 20,000*l.* part of 23,000*l.* with which it was first purchased, was taken by himself; the remainder of that sum I propose to prove was drawn out by a draft of Mr. Trotter's, on the house of Messieurs Coutts, in which we have proved it to have been deposited, and that it was paid in to the account of lord Melville, at the Bank, in the year 1800.

Then Mr. *William Charlton* was again called in, and examined as follows:

Mr. *Sergeant Best*.—You have told us you are a clerk at Messieurs Coutts and company.—What book is that you have in your hand?

Mr. *Charlton*.—The waste book.

Mr. *Sergeant Best*.—Turn to an entry of the 24th of May, 1800.

Mr. *Charlton*.—I have it before me.

Mr. *Sergeant Best*.—What do you find entered there?

Mr. *Charlton*.—12,743*l.* 2*s.* 6*d.*

Mr. *Sergeant Best*.—Does it appear by the book, whether that was paid to a draft of Mr. Trotter's on that day?

Mr. *Charlton*.—It was on the 24th of May.

Mr. *Sergeant Best*.—Have you any account of the Bank notes, with which that draft was paid?

Mr. *Charlton*.—Yes.



Then several cancelled Bank notes of the following numbers, dates, and sums, were shown the witness:

|            |                    |        |
|------------|--------------------|--------|
| No. 1993.— | 8th May, 1800..... | £.1000 |
| 1673.—     | 14th —————         | 1000   |
| 1592.—     | 7th —————          | 1000   |
| 1490.—     | 14th —————         | 1000   |
| 1491.—     | 14th —————         | 1000   |
| 364.—      | 10th April .....   | 1000   |
| 178.—      | 17th May.....      | 1000   |
| 179.—      | 17th —————         | 1000   |
| 180.—      | 17th —————         | 1000   |
| 533.—      | 20th —————         | 1000   |
| 534.—      | 20th —————         | 1000   |
| 1839.—     | 8th —————          | 1000   |
| 1326.—     | 19th —————         | 500    |
| 9.—        | 17th —————         | 200    |
| 5052.—     | 1st —————          | 40     |
| 4749.—     | 24th April .....   | 2      |
| 15581.—    | 26th —————         | 1      |

Mr. Sergeant Best.—Have you the Bank notes in your hand, with which that payment was made?

Mr. Charlton.—I will examine them, with your lordships, leave (the witness examined the notes), I believe they are.

Then the following entry in the waste book of Messieurs Coutts and company, referred to by the witness, was read:

| Saturday, 24th May, 1800. |   |   |                |                 |
|---------------------------|---|---|----------------|-----------------|
| 1000                      | — | — | 1673           | Mr. Spry.       |
| 1000                      | — | — | 1592           |                 |
| 1000                      | — | — | 1490           | £. s. d.        |
| 1000                      | — | — | 1491           |                 |
| 1000                      | — | — | 1993           | 12,743 2 6 Paid |
| 1000                      | — | — | 364            | Alex. Trotter.  |
| 1000                      | — | — | 178            |                 |
| 1000                      | — | — | 179            |                 |
| 1000                      | — | — | 180            |                 |
| 1000                      | — | — | 533            |                 |
| 1000                      | — | — | 534            |                 |
| 1000                      | — | — | 1839           |                 |
| 500                       | — | — | 1326           |                 |
| 200                       | — | — | 9              |                 |
| 40                        | — | — | 5052           |                 |
| 3                         | — | — | 1 & 2          |                 |
|                           | 2 | 6 | M <sup>o</sup> |                 |
| 12,743                    | 2 | 6 |                |                 |

[The witness was directed to withdraw.]

Mr. Sergeant Best.—Now I propose to call a witness from the Bank, to prove the Bank notes were paid into the Bank, on lord Melville's account.

Then Mr. John Lincoln was called in, and, being sworn, was examined as follows:

Mr. Sergeant Best.—Are you a clerk in the Bank?

Mr. Lincoln.—Yes, I am.

Mr. Sergeant Best.—Look at these Bank-notes; do you know when, and on whose account these Bank-notes were paid into the Bank?

Mr. Lincoln.—They were paid into the Bank, on the account of Mr. Dundas, act of parliament new account.

Mr. Sergeant Best.—When were they paid in?

Mr. Lincoln.—On the 24th of May, 1800.

[The witness was directed to withdraw.]

Then Edmund Antrobus, esq., was again called in, and examined as follows:

A Lord.—You have said that you had directions from lord Melville, to receive the instructions of Mr. Trotter, relative to the stocks. Had you any directions from Mr. Trotter, within the scope of that authority?

Mr. E. Antrobus.—Certainly not.

[The witness was directed to withdraw.]

Then Mr. John Hatfield Kennedy was again called in, and examined as follows:

Mr. Sergeant Best.—What paper is that you have in your hand?

Mr. Kennedy.—A copy from the stock ledger, of the East India company, of the account of the right honourable Henry Dundas, now lord viscount Melville.

Mr. Sergeant Best.—Do you find there any stock in the name of lord Melville?

Mr. Kennedy.—I do; there appears to be 1000*l.* from the account of Montague Lind, on the 23rd of August, 1791; 2,000*l.* from the account of sir George Richardson, deceased, the 4th of September, 1792—

Mr. Plumer.—I beg the witness may read the whole of that entry.

Mr. Kennedy.—“1,000*l.* on the 23rd of August, 1791, from Montague Lind, to lord Melville; 2,000*l.* on the 4th of September, 1792, from sir George Richardson, deceased.”

Then the account was delivered in, and is as follows:



"EAST INDIA STOCK.

The Right Honourable HENRY DUNDAS, Melville Castle, North Britain, now Baron of DUNIRA, and Viscount MELVILLE of Melville Castle, in the County of Edinburgh.

|           |                           |       |    |    |
|-----------|---------------------------|-------|----|----|
| 1793.     | Dr.                       | £.    | s. | d. |
| April 18. | To Charles De St. Leu ... | 1,000 | 0  | 0  |
| 1794.     |                           |       |    |    |
| Jan. 28.  | To Mark Sprot .....       | 450   | 0  | 0  |
| Dec. 4.   | To ditto .....            | 1,000 | 0  | 0  |
| 1800.     |                           |       |    |    |
| May 20.   | To James Barnett .....    | 1,000 | 0  | 0  |
| July      | To Balance .....          | 3,178 | 7  | 0  |
|           |                           | <hr/> |    |    |
|           |                           | 6,628 | 7  | 0  |

|          | Cr.                                         | £.    | s. | d. |
|----------|---------------------------------------------|-------|----|----|
| 1791.    |                                             |       |    |    |
| Aug. 23. | By Montague Lind .....                      | 1,000 | 0  | 0  |
| 1792.    |                                             |       |    |    |
| Sept. 4. | By Sir George Richardson,<br>deceased ..... | 2,000 | 0  | 0  |
| 1793.    |                                             |       |    |    |
| Dec. 3.  | By Scrip .....                              | 450   | 0  | 0  |
| 1795.    |                                             |       |    |    |
| Feb. 3.  | By Abraham Lalande .....                    | 2,000 | 0  | 0  |
|          | By John Beardmore .....                     | 178   | 7  | 0  |
| 1797.    |                                             |       |    |    |
| July 22. | By Alexander Trotter.....                   | 1,000 | 0  | 0  |
|          |                                             | <hr/> |    |    |
|          |                                             | 6,628 | 7  | 0  |

ACCOUNT of DIVIDENDS on the above.

| When due.                                                  | By whom received.  |
|------------------------------------------------------------|--------------------|
| From 5th January 1792 to January 1794, both inclusive..... | ROBERT DUNDAS.     |
| 5th July 1794 to 5th July 1797, ditto .....                | ALEXANDER TROTTER. |
| 5th January 1798 to 5th July 1800, ditto .....             | EDMUND ANTROBUS.   |

*East India House, the 29th January, 1806.*

**J. H. KENNEDY, Assistant Transfer Accountant."**

[The witness was directed to withdraw.]

Mr. Plumer.—I presume the account will be entered in the evidence?

Mr. Sergeant Best.—We particularly desire that it may be.—The Commons conceive they have now proved, that 13,500*l.* India stock, was purchased by Mr. Trotter, for lord Melville, with the public money; that the sum of 11,250*l.* for the loyalty loan, was paid for lord Melville, with the public money; that 7,000*l.* three per cent reduced annuities, were purchased for lord Melville, with the public money. They conceive they have further proved the sum of 4,000*l.* paid into the Bank of Scotland, on lord Melville's account; and also the sum of 5,333*l.* 8*s.* 4*d.* The Commons now propose to prove, by a calculation, the amount of the interest which lord Melville has saved, applying particularly to those sums which are paid into the Bank of Scotland, upon which your lordships have it in evidence, he, lord Melville, would have been charged with interest; and also the dividends he has received; they amount to 21,571*l.* 5*s.* 9*d.* which lord Melville has derived from the use of the public money, which the managers have traced into his hand, upon these stocks.

Then *Joseph Kaye*, esq., was called in, and being sworn, was examined as follows :

Mr. Sergeant *Best*.—Have you made any calculation, as to the profit made upon the different sums which have just been mentioned?

Mr. *Kaye*.—I have.

Mr. Sergeant *Best*.—Does the paper that

you hold in your hand contain those calculations?

Mr. *Kaye*.—It does.

Mr. *Plumer*.—Do your lordships think that this is a proper subject of evidence? Matters of calculation by the solicitor for the prosecution, upon the data in evidence, which all your lordships are competent to make for yourselves? It is no account ever entered into; it is drawing into the shape of evidence, opinions delivered by the solicitor for the prosecution, summing up his results, and giving his opinion in evidence, respecting the figures that have been before proved. Surely that is not a proper subject of proof; it is no fact, no account; it is a calculation made by the witness, and it is only for the purpose of prejudice, and to have put upon the minutes, that, which, if it be proper to be done, every one of your lordships may do for yourselves.

Mr. *Adam*.—I conceive this to be by no means admissible evidence. In the first place, the learned manager states, as an assumption of his, that here are certain matters proved; my lords, I say, therefore, that the data are assumed in the first instance. If the data be assumed, it is impossible for your lordships to receive any calculation upon those assumed data as evidence. In the next place, even if the data were not assumed, I conceive this is not evidence, but that it is observation. I take it the proper time will come, when the manager who shall be fixed upon to sum up, and observe upon the evidence, that has been given to your lordships, will have an oppor-



tunity of stating those observations, which are results of evidence. But to call a person to prove upon his oath, the result of calculations upon assumed data, is attempting to sum up the evidence upon oath, instead of leaving it to that sort of observation which will come in its proper place, when the managers shall be heard in the summing up this evidence; and therefore, I am sure your lordships will not think it right, that even this assembly should be allowed to hear calculations upon oath, where the data is assumed, and the calculations are not matter of evidence, but merely of observation.

*A Lord.*—I submit to your lordships, that the data stand where they did; they must stand or fall by the proof. There is nothing more common than to put to a witness, provided such and such a sum has been received—what is the amount of interest, and it is merely casting upon the witness, the labour of doing that, which all the lords might do with a pen themselves; but which is done through the medium of the witness, in a more compendious manner; the data and facts stand as they did, it is a mere hypothetical question to the witness.—If the fact stands so and so, what is the arithmetical result?

*Lord Chancellor.*—I take it to assume no facts whatever: it proceeds on certain data. If you take away the foundation upon which it is made, which is matter for the Court afterwards, there is an end of the superstructure.

*Mr. Sergeant Best.*—Is that calculation, which you hold in your hand, a correct calculation upon these sums?

*Mr. Kaye.*—It is as correct as I can make it. I believe every figure will be found right.

*Mr. Sergeant Best.*—It may save your lordships' time, if this should be read and delivered in.

*Lord Chancellor.*—Have you any objection to that, Mr. Plumer?

*Mr. Plumer.*—None at all; I wish to ask a question, or two.

Then *Joseph Kaye, esq.*, was cross-examined as follows:

*Mr. Plumer.*—When did you make these calculations?

*Mr. Kaye.*—I believe I made the last correction in them yesterday.

*Mr. Plumer.*—When did you begin to make these calculations?

*Mr. Kaye.*—I cannot state the precise day; it was since the trial began; one day last week, I think.

*Mr. Plumer.*—Did you make them all yourself, or were you assisted by any body?

*Mr. Kaye.*—I made them all myself.

*Mr. Plumer.*—From what did you take the data?

*Mr. Kaye.*—I must state the items, in order to answer that question. The first item is 13,500*l.* India stock; I took that from the

data of the credit in the signed accounts in these books of Messieurs Coutts and company, to the day that was carried to the credit of Mr. Trotter, as has appeared in evidence.

*Lord Chancellor.*—All the witness has done, is to establish, by calculation, that such a stock, from such a time, will produce so much. He does not himself prove any fact, and the calculations he has made must therefore depend upon the facts which are proved by others.

*Mr. Plumer.*—Does that document contain all the data upon which the calculation is made?

*Mr. Kaye.*—Yes, the learned counsel may refer to every document that has been given in evidence. The entries of the books have been given in evidence, from which I have taken this account.

*Mr. Plumer.*—You are solicitor for the managers for the House of Commons?

*Mr. Kaye.*—I am.

*Mr. Plumer.*—And likewise for the Bank?

*Mr. Kaye.*—I am.

*A Lord.*—How often have you found it necessary to make any alteration in your calculations?

*Mr. Kaye.*—Only once; I put the whole 14,500*l.* India stock together, and as they have been disposed of separately, I have divided them, so as to make it more intelligible; and also the two sums that was paid into the house of sir William Forbes and company, and Mansfield and company, I had put them in one sum; I have since taken them separately, so as to form the interest fractionally.

*Mr. Plumer.*—Whether, in the statement of the total, there is included the difference between the prime cost of the India stock, and its ultimate proceeds?

*Mr. Kaye.*—There is.

*Mr. Plumer.*—Does that comprehend part of what you carry to lord Melville's debit?

*Mr. Kaye.*—It does.

*Mr. Plumer.*—Is there any credit given in this account for the interest paid to Mr. Trotter, from year to year, for the loan of this money?

*Mr. Kaye.*—There is the whole interest of the 23,000*l.* for the whole period. Eleven thousand odd hundred pounds I think.

*Mr. Plumer.*—Does this include not barely an account of interest, but likewise the gain by the difference in the value of the stock when it was bought, and of the stock when it was sold?

*Mr. Kaye.*—It does; it contains the profits on the stock, both the India stock, the 7,000*l.* reduced, and the loyalty.

*Mr. Plumer.*—By profits, I understand you to mean the difference in what it produced ultimately when sold, not the annual profits?

*Mr. Kaye.*—No, not the annual profits; for example, the loyalty stock cost 10,000*l.* it sold for 10,757*l.* 16*s.* 3*d.* then I considered the 757*l.* 16*s.* 3*d.* as profit.

*Mr. Plumer.*—And in the India stock there



is 7,000*l.* or 8,000*l.* debited, as the difference between its original cost and final sale?

Mr. *Kaye*.—I have taken the difference certainly—I have stated it in this way—the 13,500*l.* stock is credited in May 1800, at 28,339*l.* 2*s.* 6*d.*—the 1,000*l.* which stood in lord Melville's name, which was transferred in 1791, was sold and credited in his account with Coutts for 2098*l.* 15*s.* that makes 14,500*l.* India stock 30,431*l.* 17*s.* 6*d.*—Then I have taken the dividends upon the two first years which is eight per cent, the dividends upon the last eight years were at ten guineas per cent, that would make a total of 44,931*l.* 17*s.* 6*d.*—Then I have deducted from that the 23,000*l.* which it is stated to have cost, and the interest on that 23,000*l.* for the ten years, in the same way as I have debited the dividends for ten years, which amounts together to 34,500*l.* so that the profits upon the India stock, and the excess of the dividends above the interest, would amount to 10,431*l.* 17*s.* 6*d.*

Mr. *Plumer*.—Then upon the India stock alone there arises a profit according to your calculation of about 10,000*l.*

Mr. *Kaye*.—Yes, the profit and excess of dividends above the interest.

Mr. *Sergeant Best*.—Does this account include the 10,600*l.* on the Chest account?

Mr. *Kaye*.—No, here is nothing here upon the Chest account—nothing but the loyalty.

Mr. *Whitbread*.—The Commons having now shown the progress of this 13,500*l.* India stock, and the payments made by Mr. Alexander Trotter, in consequence of the proceeds of that stock, into the Bank on lord Melville's account (the act of parliament new account), they now wish to show that 1,000*l.* of the whole sum which was bought, was transferred to lord Melville personally: which 1,000*l.* was sold at the time, and the credit of that given to lord Melville's account, as making up from the bank of Messieurs Coutts part of his act of parliament account; they now wish to show that this 13,500*l.* was not in fact sold, but was pledged for the value of the stock at the day, and for this purpose they wish to call Mr. Coutts Trotter again.

A *Lord*.—Before Mr. Trotter is called, I wish to suggest whether this paper should be entered on your lordships' minutes; if it should turn out that there is no foundation for these facts, it will have an improper effect, by having been entered.

Another *Lord*.—All the inconvenience that might result from this entry, would be ob-

viated by stating, that if it is proved, or shall be proved, that such and such facts exist, that is the calculation of the profits; but that will not be an admission of the facts.

A *Lord*.—I submit, whether it is not proper to ask the witness on what suppositions he makes these calculations.

On what suppositions, or admissions, do you make these calculations which you have given to the court?

Mr. *Kaye*.—The first item of 13,500*l.* India stock I have taken at the value which was paid into Mr. Trotter's account.

A *Lord*.—Is not the foundation of your making these calculations, a supposition that these are the facts?

Mr. *Kaye*.—Yes.

A *Lord*.—Read the title.

Mr. *Kaye*.—"A statement of the profits made by investments in the funds, on account of lord Melville, and by advances made for interest of money." Then on the 21st May, 1800, I credit the account for the 13,500*l.* India stock, the sum paid into Mr. Trotter's account at Coutts's by Mr. Sprot. The remaining India stock I have taken at the amount at which Messieurs Coutts credited his lordship in the account signed by his lordship. Then the loyalty 5 per cent stock, I have taken as having cost 10,000*l.*, as paid by Messieurs Coutts; supposing it to have cost that sum, and to have produced 11,250*l.* Then I have taken the 7,000*l.* three per cents annuities, at the sum which they cost in June 1797, when they were purchased.

A *Lord*.—I submit that this might be all set right, if the honourable manager would put one question to the witness. Supposing such and such facts to have been proved, is that the calculation?

Another *Lord*.—Is that calculation formed on the assumption by you, that all the facts stated in that paper are proved?

Mr. *Kaye*.—Most certainly.

A *Lord*.—Is not one of the assumptions, on which that calculation was made, that the India stock was sold at a profit?

Mr. *Kaye*.—Yes, because that sum of money was paid in as the value of the stock on that day, at the time of closing lord Melville's account, and therefore I take it upon that assumption.

The paper was delivered in, and is as follows:



|                                                                                                                 | £.       | s. | d. | £.     | s. | d.          |
|-----------------------------------------------------------------------------------------------------------------|----------|----|----|--------|----|-------------|
| £.13,500 India Stock, in May 1800 .....                                                                         | £.28,333 | 2  | 6  |        |    |             |
| £.1,000 sold for .....                                                                                          | 2,098    | 15 | 0  |        |    |             |
|                                                                                                                 |          |    |    | 30,431 | 17 | 6           |
| Dividends, for Two Years, at 8 per Cent is .....                                                                | £. 2,320 | 0  | 0  |        |    |             |
| Dividends for Eight Years, at £.10 10 per Cent is .....                                                         | 12,180   | 0  | 0  |        |    |             |
|                                                                                                                 |          |    |    | 14,500 | 0  | 0           |
| Stock cost .....                                                                                                | £.23,000 | 0  | 0  | 44,931 | 17 | 6           |
| Interest thereon for Ten Years at 5 per Cent is .....                                                           | 11,500   | 0  | 0  | 34,500 | 0  | 0           |
| Net Profit on India Stock.....                                                                                  |          |    |    |        |    | 10,431 17 6 |
| £.11,250 Loyalty sold in May 1800, for.....                                                                     |          |    |    | 10,757 | 16 | 3           |
| Add Three and a Half Year's Dividend .....                                                                      |          |    |    | 1,968  | 15 | 0           |
|                                                                                                                 |          |    |    | 12,726 | 11 | 3           |
| This Stock cost in 1797 .....                                                                                   |          |    |    | 10,000 | 0  | 0           |
| Net Profit on the Loyalty Loan .....                                                                            |          |    |    |        |    | 2,726 11 3  |
| £.7,000 3 per Cent Reduced Annuities, sold in May 1800, for.....                                                |          |    |    | 4,410  | 0  | 0           |
| Add Three Years' Dividends .....                                                                                |          |    |    | 630    | 0  | 0           |
|                                                                                                                 |          |    |    | 5,040  | 0  | 0           |
| This Stock cost in June 1797 .....                                                                              |          |    |    | 3,543  | 15 | 0           |
| Net Profit on the 3 per Cent Reduced .....                                                                      |          |    |    |        |    | 1,496 5 0   |
| £.2,000 India Stock purchased in September 1792, was in May 1800 of the Value of .....                          |          |    |    | 4,197  | 10 | 0           |
| Add Seven and a Half Year's Dividend at £.10 10 per Cent.....                                                   |          |    |    | 1,575  | 0  | 0           |
|                                                                                                                 |          |    |    | 5,772  | 10 | 0           |
| This Stock, in September, 1792, cost .....                                                                      |          |    |    | 4,057  | 10 | 0           |
| Net Profit on this India Stock .....                                                                            |          |    |    |        |    | 1,715 0 0   |
| Total Profit by Investment in the Funds .....                                                                   |          |    |    |        |    | 16,369 13 9 |
| Thirteen Years Interest on £.5,374 paid to Sir William Forbes and Co. and Mansfield and Co. at 5 per Cent ..... |          |    |    |        |    | 3,493 2 0   |
| Eleven Years Interest of £.4,000 paid ditto at 5 per Cent .....                                                 |          |    |    |        |    | 2,200 0 0   |
|                                                                                                                 |          |    |    |        |    | 22,062 15 9 |

[The witness was directed to withdraw.]

Mr. Whitbread.--I mean to show, that the stock was pledged, and that the sum of money was the same whether pledged or sold; for it was the value of the stock the day it was paid in.

Then *Coutts Trotter*, esq. was again called in, and examined as follows:

Mr. Sergeant Best.--Have you any knowledge of the power or control over a certain sum of 13,500*l.* India stock, being given by Alexander Trotter to Mark Sprot?

Mr. C. Trotter.—There was an order given by Mr. Trotter, to hold that sum of stock at the disposal of Mr. Mark Sprot.

A Lord.—That authority must, I apprehend, have been in writing.

Mr. Whitbread.--Was that direction given in writing, or verbally?

Mr. C. Trotter.—It was given in writing.

Mr. Whitbread.—Have you that writing in your possession?

Mr. C. Trotter.—I have it. This is the paper.

The same was read, and is as follows:

"London, the 21st of May, 1800.—Messieurs Thomas Coutts and Company, I desire you will transfer to Mark Sprot, esq. or to whoever he shall direct, the sum of 7,000*l.* reduced 3 per cent annuities, and 13,500*l.* East India stock, standing in your names, at my disposal.

"ALEX. TROTTER."

Then *Coutts Trotter*, esq. was cross-examined, as follows:

Mr. Plumer.—Do you recollect, in the year 1797, that loan which went by the name of the Loyalty loan?

Mr. C. Trotter.—I do perfectly.

Mr. Plumer.—For how long did it continue to fall after the first subscription?

Mr. C. Trotter.—I am unable to state the precise time; but it was under its original value for a considerable time.

Mr. Plumer.—Was it so throughout the year 1797, in which it was originally subscribed?



Mr. C. Trotter.—I do not speak from perfect recollection; but I believe it was.

Mr. Plumer.—Do you recollect how much it fell below par?

Mr. C. Trotter.—I think I remember, that at one time, the five per cent stock was at seventy-two or seventy-three; but I cannot speak as to the fact upon my oath.

Mr. Plumer.—Do you know what it was taken at?

Mr. C. Trotter.—One hundred and twelve pounds ten shillings stock for every hundred pounds money, which brings it somewhere to about ninety pounds.

Mr. Plumer.—Then would any one that had sold it have lost the difference of between seventy-two and ninety pounds by the sale?

Mr. C. Trotter.—Decidedly so.

[The witness was directed to withdraw.]

Then Mark Sprot, esq. was called in, and, being sworn, was examined as follows:

Mr. Whitbread.—Whether you accepted of the control over a certain sum of India stock, amounting to 13,000*l.* from Mr. Alexander Trotter, in the month of May, 1800?

Mr. Sprot.—I think I did, but I cannot be certain.

Mr. Whitbread.—Did you advance a sum of money upon certain stock, East India and other stock, through the solicitations of Mr. Alexander Trotter, at that time?

Mr. Sprot.—I did.

Mr. Whitbread.—To what amount?

Mr. Sprot.—I think to 51,700*l.* I have seen it since, to refresh my memory.

Mr. Whitbread.—On whose account did you make that advance?

Mr. Sprot.—To the Honourable Robert Saunders Dundas.

Mr. Whitbread.—Did you obtain complete power over those stocks as your own, in consequence of that advance?

Mr. Sprot.—I certainly had complete power to have had it whenever I pleased.

Mr. Whitbread.—To whom did you pay the 51,700*l.* that you have mentioned?

Mr. Sprot.—I paid it to Alexander Trotter.

Mr. Whitbread.—Did you receive a draft, or the produce of a draft, of lord Melville, to the amount of 1,427*l.* to even the account between the loan and the stock you had received, as a pledge for that loan?

Mr. Sprot.—I never received a draft of lord Melville.

Mr. Whitbread.—Did you receive a sum of 1,427*l.* in order to make that even?

Mr. Sprot.—I received it from Mr. Alexander Trotter, as far as my memory goes.

Mr. Whitbread.—Cannot you refer to your banking-book, in which you have the exact amount of the sum?—Turn to the book, May 22nd, 1800.

Mr. Sprot.—I have not got the book here.

Mr. Whitbread.—Do you recollect that you did receive that sum of 1,427*l.* 11*s.* 11*d.*?

Mr. Sprot.—I do.

Mr. Whitbread.—Do you know from whom you received that?

Mr. Sprot.—I think, to the best of my knowledge, it was from Alexander Trotter. I am sure it was.

Mr. Whitbread.—On whose account did you receive it?

Mr. Sprot.—On the honourable Robert Saunders Dundas's account.

Mr. Whitbread.—Did you transact money business largely at any time for Mr. Alexander Trotter?

Mr. Sprot.—I have borrowed money of Mr. Alexander Trotter, and have lent him considerable sums; large sums.

Mr. Whitbread.—Did you ever purchase navy or victualling bills, or other government securities, for Alexander Trotter, and for his benefit and advantage?

Mr. Sprot.—I once purchased navy bills to the amount of, I said, ten or twelve thousand pounds; but I find in a book I have found since, there is an account of the navy I purchased for him.

Mr. Whitbread.—Refer to your book, and state what is the quantity of navy bills you so purchased?

Mr. Sprot.—That would take up a long time to do.

Mr. Whitbread.—Were the navy bills you so purchased for Alexander Trotter, at any time, at a discount?

Mr. Sprot.—I have no memory of that.

Mr. Whitbread.—Do you recollect Alexander Trotter borrowing a sum of money of you, in preference to the sale of his navy bills?

Mr. Sprot.—I remember his borrowing money of me; a considerable sum. I have reason to think it was to prevent his selling his navy bills.

Then Mark Sprot, esq. was cross-examined as follows:

Mr. Adam.—Had you any pecuniary transactions with lord Melville in your life?

Mr. Sprot.—Never.

Mr. Adam.—Have you any acquaintance with lord Melville?

Mr. Sprot.—A very slight one. I have had the honour, two or three times, of being in lord Melville's company; but never a word of money, or any thing of that kind passed.

Mr. Adam.—Were not you applied to by Mr. Trotter, in 1800, to advance money to him on certain stock?

Mr. Sprot.—I was.

Mr. Adam.—State the particulars of that transaction, to the best of your recollection, and with whom it was?

Mr. Sprot.—Mr. Trotter told me, that he wished I would do him the favour of lending him, upon India stock and reduced loyalty stock: I agreed to lend it him. He proposed to me to lend it to the honourable Robert Dundas. I then had a meeting with the honourable Robert Dundas, and I said I would not lend it upon heavy stock; such as India



and loyalty too, which was a heavy stock; but that I wished to lend it upon 3 per cent consols and India. The sum wanted was fifty thousand and odd pounds; upon which I had a meeting with him next day, and that 1,400*l.* mentioned, was to reduce the stock; that the dividend of India, and the dividend of loyalty, should be 5 per cent, equal to the sum lent, 5 per cent.

Mr. *Adam*.—Then was it upon that account that you received from Mr. Trotter, 1,427*l.* 11*s.* 11*d.*?

Mr. *Sprot*.—It was.

Mr. *Adam*.—Had you any intercourse with lord Melville during the course of that transaction?

Mr. *Sprot*.—None.

Mr. *Adam*.—Was the stock disposed of, or not?

Mr. *Sprot*.—It was rather long-winded. I was anxious to get my money; I had stayed two or three years, and I wrote either to the honourable Robert Saunders Dundas, or to Mr. Trotter, begging permission to sell the stock, for I did not think things were clear.

Mr. *Adam*.—Look at the paper I have put into your hand: is that your hand-writing?

Mr. *Sprot*.—It is; and this can tell the very dates.

Mr. *Adam*.—Was that paper written by you at the time of the transaction?

Mr. *Sprot*.—It was.

Mr. *Adam*.—Can you, by having your memory refreshed from that paper, specify the particulars of the transaction?

Mr. *Sprot*.—Yes, I can: the sum of India stock was 14,500*l.* which was valued at the price of the day, 210*l.*; the consols 35,529*l.* 1*s.* 3*d.* valued at 60*l.*; that made 51,767*l.* 15*s.* the sum that I lent.—There is interest from the 21st of May 1800, to the 21st of May 1801, 2,588*l.* 7*s.* 9*d.*—Then there is cash paid Alexander Trotter 30th October. This was to bring the interest to a date.—I remember Mr. Trotter said, you have got this fourteen hundred odd pounds; now the interest will bring it to this date, to the 30th of October, it makes the interest 5 per cent, and the interest of the sum lent 5 per cent.

Mr. *Adam*.—You say you have had various money transactions with Mr. Trotter, lending money and borrowing money; whether these money transactions with Mr. Alexander Trotter, were not all entirely upon Mr. Alexander Trotter's own account?

Mr. *Sprot*.—His own account.

Mr. *Adam*.—Have you any knowledge or belief, that any other person whatever was concerned in this transaction?

Mr. *Sprot*.—None.

Mr. *Adam*.—Or that they were for the benefit or advantage of any other person?

Mr. *Sprot*.—None.

Mr. *Whitbread*.—I object to the word in the question as to belief, because the learned counsel has done so. The witness should be confined to his knowledge.

Mr. *Sprot*.—I do not know it of my own knowledge.

Mr. *Adam*.—Whether you had any knowledge at the time of these transactions, that the money advanced to you, at different times, by Mr. Alexander Trotter, was public money?

Mr. *Sprot*.—None; I might surmise and conjecture, as he was paymaster of the navy, but I had no knowledge of it.

Mr. *Adam*.—Had you any knowledge of Mr. Trotter and his connexions, and whether his nearest connexions were not persons in considerable opulence?

Mr. *Sprot*.—Mr. Coutts's father and Mr. Trotter's father were partners. Mr. Trotter's brother is a partner in the house of Thomas Coutts and Company; and he has a brother, a man of considerable fortune; and he has several very considerable connexions; and I having put my stock, as a security to Mr. Trotter, into Mr. Coutts' name, I was led to think it might be Mr. Coutts' money; I had borrowed money, and have money of him now, upon government security; and did not know whether Alexander Trotter might not be the channel of conveyance.

Mr. *Sergeant Best*.—It appears now from the evidence, that the loan was not upon the 13,500*l.* but upon 14,500*l.* with the addition of 1,000*l.* Have you any knowledge that this sum of money so advanced by loan, to the amount of fifty-one thousand odd hundred pounds was for lord Melville?

Mr. *Plumer*.—The witness has already said, as I understood, that he had never any conference with lord Melville; therefore, whatever he knows must be upon the information of others.

Mr. *Sprot*.—I am not certain of that, neither could I upon my oath say, whether Mr. Trotter mentioned lord Melville's name or not.

Mr. *Sergeant Best*.—Do you know of your own knowledge, whether this money was advanced for lord Melville's purposes or not?

Mr. *Sprot*.—I do not know.

Mr. *Adam*.—What was the nature of the security you received beside the stock itself?

Mr. *Sprot*.—A missive letter Mr. Robert Dundas gave me, saying he had borrowed so much money upon that stock, and I engaged to account to him for the dividends, and he was to allow me interest for the money.

[The witness was directed to withdraw.]



Then the Paper shown by the Counsel for Viscount MELVILLE to the Witness, was delivered in, and is as follows:

| 1800.                                                            | £.     | s. | d. |
|------------------------------------------------------------------|--------|----|----|
| May 21, £.14,500 at 210                                          |        |    |    |
|                                                                  | 30,450 | 0  | 0  |
| 35,529 13 Con. 60 ...                                            | 21,317 | 15 | 0  |
|                                                                  | 51,767 | 15 | 0  |
| Interest from 21st May 1800, till 21st May 1801.....             | 2,588  | 7  | 9  |
| Cash paid Alexander Trotter, Esq. 30th October .....             | 862    | 15 | 10 |
| Interest from 21st May 1801, to 21st May 1802 .....              | 2,588  | 7  | 9  |
| Interest from 21st May 1802, to 1st Feb. 1803, is 256 Days ..... | 1,815  | 8  | 5  |
|                                                                  | 59,622 | 14 | 9  |
| 1803.                                                            | £.     |    |    |
| February 1, To 14,500 India Stock                                | 26,809 | 3  | 7  |

| 1800.                                                                          | £.               | s. | d. |
|--------------------------------------------------------------------------------|------------------|----|----|
| July 22, By Div <sup>d</sup> $\frac{1}{2}$ Year,                               |                  |    |    |
|                                                                                | £14,500 Ind. 761 | 5  | 0  |
| Ditto ... 35,529 13 Con. 532                                                   | 18               | 10 |    |
|                                                                                | 1,294            | 3  | 10 |
| 1801.                                                                          |                  |    |    |
| July 13, By One Year's Dividend,                                               |                  |    |    |
| Ditto.....                                                                     | 2,588            | 7  | 9  |
| 1802.                                                                          |                  |    |    |
| July 13, By ditto, ditto .....                                                 | 2,588            | 7  | 9  |
| 1803.                                                                          |                  |    |    |
| January 13, By Half Year's ditto ...                                           | 1,294            | 3  | 10 |
| Feb. 1, By Sale of 35,529 13 Cons. at 70 $\frac{1}{2}$ —70 $\frac{1}{2}$ ..... | 25,048           | 8  | 0  |
|                                                                                | 32,813           | 11 | 2  |
| 14,500 India Balance .....                                                     | 26,809           | 3  | 7  |
|                                                                                | 59,622           | 14 | 9  |

Adjourned to the Chamber of Parliament.

#### NINTH DAY.

Friday, May 9, 1806.

The Lords and others came from the Chamber of Parliament into Westminster-hall, in the same order as on the first day of the trial.

*Lord Chancellor.*—Gentlemen, Managers for the Commons, you may now proceed with your evidence, and the Lords will be pleased to give their attention.

*Mr. Whitbread.*—My lords, your lordships will be pleased to recollect that it is in evidence before you, that a letter was written by lord Melville to the commissioners of naval inquiry, in the month of June, 1804. It is also in evidence before your lordships, by the testimony of Mr. Sergeant Praed, that a message was sent to lord Melville, desiring that he would appear before the naval commissioners, at any time that should be most convenient to him. My lords, the Commons now propose to put in evidence before your lordships, the letter of lord Melville, in answer to that summons, or requisition, they so sent, either verbally, or in writing. The Commons will call, to prove this letter, Mr. Williams, the secretary: Mr. Sergeant Praed, not having been at that time a commissioner of naval inquiry. Your lordships will observe the letter is dated on the 3rd of November; that lord Melville acknowledges having received their request on the 2nd of November, two days before he made his appearance; it being in evidence that he appeared before the naval commissioners on the 4th.

*Mr. Plumer.*—I hope the honourable manager will excuse my just mentioning, that I understood it was proposed to give a piece of evidence which is preliminary to this; I mean, the first letter that was written by the com-

missioners of naval inquiry to lord Melville. Your lordships may recollect, on a former day, that letter was not forthcoming, but it was proposed to introduce it on a subsequent day. It seems to relate to the subject in question, and, therefore, if your lordships please, this will be the proper place to introduce it.

*Mr. Whitbread.*—We propose to introduce every letter sent to lord Melville; I believe the precepts are to be found in the books; the secretary will read the original precepts from the books, and so take this letter in its turn; and of course, upon the minutes, all the letters will be entered according to their dates.

*Mr. Plumer.*—I only mention it because it was reserved on a former day, and proposed to be introduced in its proper place.

*Lord Chancellor.*—Have you got that letter, Mr. Plumer?

*Mr. Plumer.*—We have not got it; Mr. Sergeant Praed, I understood, said he would produce the entry that they have of that letter, in their book, on a subsequent day.

*Mr. Whitbread.*—It is so proposed to do.

Then Mr. John Williams was called in, and, being sworn, was examined as follows:

*Mr. Whitbread.*—Are you secretary to the commissioners of naval inquiry?

*Mr. Williams.*—I am.

*Mr. Whitbread.*—Refer in your book to the original entry of any correspondence between the naval commissioners and lord Melville. What book is that you have in your hand?

*Mr. Williams.*—The book containing the entry of the letters and the precepts of the commissioners of naval inquiry.

*Mr. Whitbread.*—Refer to the letter antecedent to the 30th of June, 1804.

*Mr. Williams.*—It is a precept, dated 26th June, 1804, to the right honourable lord vis-



count Melville, requiring to be furnished with an account.

Then the following entry in a book, entitled Precept Book, was read.

“ To whom issued      Subject.

Right honourable lord  
viscount Melville.

“ Requiring to be furnished with an account of monies (exclusive of your salary as treasurer of the navy) received by you, or any person on your account, or by your order, from the paymaster of the navy, between the 1st of July, 1785, and 31st of December, 1800, specifying the times when such monies were received, and also the times when, and the persons by whom, the same were returned to the Bank or the paymaster.”

Mr. *Whitbread*.—Is that the first precept, or letter, that appears upon the books of the commissioners of naval inquiry, addressed by them to lord Melville?

Mr. *Williams*.—It is.

Mr. *Whitbread*.—Was the letter of the 30th of June,\* which is now in evidence, lord Melville's answer to that precept?

Mr. *Williams*.—It was.

Mr. *Whitbread*.—Have you any precept, or letter, to lord Melville, antecedent to the date of the 3rd of November, 1804?

Mr. *Williams*.—A letter was written by the commissioners to lord Melville, on the 2nd of November, 1804.

The same was read from the letter book produced by the witness, and is as follows:

“ 2nd November, 1804.

“ My lord;

“ Being desirous of receiving some information from your lordship relative to the management of the business of the Pay-office of the navy during your treasurership; we request you will let us know what day in the next week, and at what hour, it will be most convenient to your lordship to attend us for that purpose.

“ We have the honour to be, &c.

CH. M. POLE.

EWAN LAW.

JOHN FORD.

HENRY NICHOLS.

W. MACKWORTH PRAED.”

“ Right honourable lord viscount Melville.”

\* See the letter, page 308.

Mr. *Whitbread*.—This letter is signed by lord Melville?

Mr. *Plumer*.—I admit that the signature is lord Melville's.

The same was read, and is as follows:

“ Admiralty, 3rd November, 1804.

“ Gentlemen;

“ I have this morning received your letter of the 2nd instant. If nothing unforeseen occurs to prevent me, I will call at your office upon Monday, at eleven o'clock.

I have the honour to be,

Gentlemen,

Your most obedient humble servant,

MELVILLE.”

“ To the Commissioners  
of Naval Inquiry.”

Mr. *Whitbread*.—Refer to the precept for the return of the balances.

Mr. *Williams*.—The first precept to the treasurer of the navy, is dated the 17th of January, 1803, requiring an account of the balances of public money.

Mr. *Whitbread*.—Your lordships observe that this was nearly a year and a half before the first letter to lord Melville; the precept for the return of the balances having been issued in the early part of 1803.

Mr. *Plumer*.—To whom was that precept, for the return of the balances issued?

Mr. *Williams*.—It was directed to the treasurer of the navy, and sent to his office.

Mr. *Whitbread*.—The gentleman who was treasurer of the navy at that time, will be called before your lordships, and will give evidence on that subject. Mr. Bathurst was then treasurer of the navy.

Mr. *Williams*.—In addition to that precept, there was another on the 26th of January, 1803, requiring in addition to the account already called for by the precept of the 17th instant, an account of the balance of public money in the hands of the different cashiers or sub-accountants of the treasurer of the navy, made up to the first of January, in each year, from 1790.

Then the following entries in the same book were read:



| To whom issued.        | For what.                                                                                                                                                                                                                                                                         | Date.           | When delivered. | When Return made. |
|------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------|-----------------|-------------------|
| Treasurer of the Navy. | Account of Balance of Public Money in his Hands, made up to the 1st January in each Year from 1790, under each respective Head of Service, with the Amount of the Sums standing in his Name at the Bank at such periods.                                                          | 17th Jan. 1803. | 17th Jan. 1803. | 2nd Feb. 1803.    |
| To whom issued.        | For what.                                                                                                                                                                                                                                                                         | When issued.    | When delivered. | When Return made. |
| Treasurer of the Navy. | Requiring, in Addition to the Account already called for by Precept of the 17th instant.<br>An account of the Balance of Public Money in the Hands of the different Cashiers or Sub-accountants of the Treasurer of the Navy, made up to the 1st January in each Year, from 1790. | Jan. 26th 1803. | Jan. 26th 1803. | 2nd Feb. 1803.    |

Mr. *Whitbread*.—I now propose to put into the hands of the witness, papers which purport to be returns to this precept. What are those papers?

Mr. *Williams*.—The first is an account of the balances of public money in the hands of the treasurer of his majesty's navy, his different cashiers or sub-accountants, made up to the 31st of December in each year, since 1790, with the amount of the sums standing in the treasurer's name in the Bank at such periods.

Mr. *Plumer*.—That paper is not evidence.

Mr. *Whitbread*.—Read a letter from the treasurer of the navy, dated Navy-pay-office, February the 2nd, 1803, signed Charles Bragge.

Lord *Chancellor*.—Have the counsel for the defendant any objection to this letter being read?

Mr. *Plumer*.—Even if Mr. Bathurst's handwriting were authenticated, it appears to me that it would not be evidence.

A *Lord*.—It would be of no use if Mr. Bathurst were here, unless he could state that he himself had made the inquiry, and that such was, upon his immediate investigation of the book, the result of the balance as now stated; and it will therefore probably be useless to wait for the appearance of that gentleman, who, if he came could not prove the fact, if he had not made the investigation himself.

Mr. *Whitbread*.—We propose to prove that this letter was sent by Mr. Bathurst, together with the balances made up by Mr. Wilson, in the Navy-pay-office. Mr. Wilson does not appear to be in immediate attendance; we will therefore proceed on another head, and call Mr. *Meheux*.

[The witness was directed to withdraw.]

Then John *Meheux*, esq., was called in, and, being sworn, was examined as follows:

Mr. *Whitbread*.—Are you an officer at the board of control for the affairs of India?

Mr. *Meheux*.—I am.

Mr. *Whitbread*.—How long have you held any situation there?

Mr. *Meheux*.—From the first establishment of that board in September 1784.

Mr. *Whitbread*.—Who was president of that board at the time you first took your seat there?

Mr. *Meheux*.—The late lord Sydney.

Mr. *Whitbread*.—Who succeeded lord Sydney?

Mr. *Meheux*.—Lord Grenville.

Mr. *Whitbread*.—Who succeeded lord Grenville?

Mr. *Meheux*.—Lord Melville.

Mr. *Whitbread*.—How long did lord Melville continue in that situation?

Mr. *Meheux*.—From 1793 till the 19th of May, I believe, 1801.

Mr. *Whitbread*.—Did you receive a salary for lord Melville, as president of the board of control, after the time that a salary was annexed to that office?

Mr. *Meheux*.—No, not from that time.

Mr. *Whitbread*.—Did you ever receive the salary for lord Melville?

Mr. *Meheux*.—I do not know that I did ever absolutely receive it, because I received the whole sum of money for the payment of the office, at the India House, and paid lord Melville's proportion of it, on lord Melville's account, into Drummonds' house.



Mr. Whitbread.—Did you pay any proportion of it to any other person?

Mr. Meheux.—Never.

Then John Meheux, esq., was cross-examined as follows:

Mr. Plumer.—When did lord Melville become president of the board of control?

Mr. Meheux.—From the moment he first entered that office he began to do duty.

Mr. Plumer.—When was that?

Mr. Meheux.—From September, 1784.

Mr. Plumer.—From September, 1784, till May 1801, lord Melville did the whole business of that extensive department?

Mr. Meheux.—I may say he did, almost exclusively. I might almost go farther, and say quite, with the other members that were of the board, junior to him.

Mr. Plumer.—Was the business of the office at that time, and particularly at the first periods of it, a business that required very great and constant attention?

Mr. Meheux.—Very great and constant, without any salary, I believe, till 1793.

Mr. Plumer.—Then, for the first nine years of that time, lord Melville executed the duties of that extensive department, without any salary at all?

Mr. Meheux.—Without any salary whatever.

Mr. Plumer.—Do you recollect that was the period when the first establishment took place of the board of control, 1784?

Mr. Meheux.—Certainly; and I believe they first met on the 3rd of September, 1784, at the Treasury.

[The witness was directed to withdraw.]

Then George Fennell, esquire, was again called in, and examined as follows:

Mr. Whitbread.—What was your situation in the Navy-pay-office, in the year 1786.

Mr. Fennell.—On the arrangement in the office, in consequence of the order in council dated the 9th of August, 1786, I went into the accountant's branch, established by that order in council, as second clerk.

Mr. Whitbread.—Did you arrive at the head of that branch?

Mr. Fennell.—In January, 1788, I did.

Mr. Whitbread.—Has that branch continued its proper functions in the Navy-pay-office, up to this time?

Mr. Fennell.—No.

Mr. Whitbread.—When did its functions cease?

Mr. Fennell.—Altogether in the year 1800.

Mr. Whitbread.—When were they first interrupted?

Mr. Fennell.—Some of the clerks were withdrawn so early as in the years 1794 and 1795.

Mr. Whitbread.—What was the reason of those clerks being withdrawn?

Mr. Fennell.—I understand—

Lord Chancellor.—Do you know the reason? Do not state what you understand; but what you know.

Mr. Fennell.—They were withdrawn to assist the other branches in the current business, which was accumulating in consequence of the pressure of the war.

Mr. Whitbread.—Of how many clerks had that branch originally consisted?

Mr. Fennell.—Nine.

Mr. Whitbread.—How many clerks were at first withdrawn?

Mr. Fennell.—They were withdrawn very gradually; I believe, only one at first.

Mr. Whitbread.—Were others withdrawn soon, or at any time after?

Mr. Fennell.—In the course of two or three years. I cannot speak precisely.

Mr. Whitbread.—State how they were gradually diminished, to the time when they ceased altogether?

Mr. Fennell.—As I before stated, in the latter end of the year 1794 and 1795, there were four of them employed in the inspector's branch; and another branch was established, I believe, in the year 1795: except myself, the clerks were altogether withdrawn in the latter end of the year 1797.

Mr. Whitbread.—How long did you continue to act singly in that branch, after the rest were withdrawn?

Mr. Fennell.—During the years 1798 and 1799.

Mr. Whitbread.—Were you yourself finally removed?

Mr. Fennell.—I was, from January 1800, employed to assist in the pay branch.

Mr. Whitbread.—Were you removed altogether to Chatham, or to any other out-port?

Mr. Fennell.—I was removed to Chatham, in consequence of the illness of a gentleman there, in January 1800.

Mr. Whitbread.—How long did you continue at Chatham?

Mr. Fennell.—Till May of the same year.

Mr. Whitbread.—Was the accountant's branch entirely without any person belonging to it, during your absence?

Mr. Fennell.—Entirely.

Mr. Whitbread.—Is the accountant's branch now restored?

Mr. Fennell.—It is.

Mr. Whitbread.—When did its restoration take place?

Mr. Fennell.—Completely, only since within this month.

Mr. Whitbread.—How many clerks are there now employed in the accountant's branch?

Mr. Fennell.—There are now six, beside myself, employed.

Mr. Whitbread.—When were you first sent back to take your appropriate business in the accountant's branch?

Mr. Fennell.—In February, 1803.

Mr. Whitbread.—Do you know, that during the time lord Melville was treasurer of the



navy, the public money was placed by his paymaster at the house of Messieurs Coutts and Company?

*Lord Chancellor.*—Do you know where the public money was placed during the time lord Melville was treasurer of the navy?

*Mr. Fennell.*—I understand—

*Lord Chancellor.*—Do you know it? State only what consists with your own knowledge?

*Mr. Fennell.*—I know it was kept at Messieurs Coutts's, because I received a draft there.

*Mr. Whitbread.*—Have you received a draft upon the house of Coutts for public money?

*Mr. Fennell.*—I have.

*Mr. Whitbread.*—Did you know at that time that it was so deposited contrary to act of parliament?

*Mr. Plumer.*—This is asking the witness to give an opinion upon the act of parliament.

*Mr. Whitbread.*—Did you call the attention of your principal, Mr. Bragge Bathurst, at any time to the circumstance of public money being placed at a private banker's?

*Mr. Fennell.*—I did.

Then *George Fennell, esq.*, was cross-examined as follows:

*Mr. Plumer.*—While the accountant's office existed, did not the clerks in that office do their business jointly with the navy board?

*Mr. Fennell.*—They did.

*Mr. Plumer.*—Were not the clerks in the navy board withdrawn before the clerks in the accountant's office were withdrawn?

*Mr. Fennell.*—I cannot speak positively to that.

*Mr. Plumer.*—Who had the control over the clerks of the navy board: who had the direction of that withdrawing?

*Mr. Fennell.*—The navy board had certainly the control over their own clerks.

*Mr. Plumer.*—How many clerks were there, who used to assist from the navy board, whilst they went on with their joint operations, before any were withdrawn?

*Mr. Fennell.*—I believe, four.

*Mr. Plumer.*—Were all the four withdrawn, or were only some of them withdrawn?

*Mr. Fennell.*—I do not recollect; I believe I should have stated that there were more than four employed at one time; I believe there were two sets as they are called, employed for some time, but I do not recollect for how long a time.

*Mr. Plumer.*—Of how many did the two sets consist?

*Mr. Fennell.*—Of four in each set, I believe. I never was employed in that particular branch myself, and I cannot speak positively.

*Mr. Plumer.*—Were not all the eight clerks, in consequence of the pressure of business arising from the war, withdrawn for other business?

*Mr. Fennell.*—I understand so.

*Mr. Plumer.*—Were not the clerks that

were withdrawn from the accountant's office absolutely wanted in the other departments, from the increased business of the war?

*Mr. Fennell.*—I cannot speak positively to that; that was not in my department.

*Mr. Plumer.*—Could the accountant's clerks have gone on with the business alone, when the navy board's clerks were withdrawn?

*Mr. Fennell.*—Certainly not.

[The witness was directed to withdraw.]

*Mr. Whitbread.*—I now propose to call Mr. Bragge Bathurst, a member of the House of Commons.

Then the right honorable *Charles Bragge Bathurst* was called in, and, being sworn, was examined as follows:

*Mr. Whitbread.*—Were you at any time treasurer of the navy?

*Mr. Bathurst.*—I was.

*Mr. Whitbread.*—When were you appointed to that office?

*Mr. Bathurst.*—In November, 1801, I think.

*Mr. Whitbread.*—How long did you continue in that office?

*Mr. Bathurst.*—Till the Spring of 1803.

*Mr. Whitbread.*—Who was your paymaster during that time?

*Mr. Bathurst.*—Mr. Trotter.

*Mr. Whitbread.*—Where was the public money belonging to the Navy-pay-office lodged when you first accepted the office of treasurer of the navy?

*Mr. Plumer.*—I submit this is irrelevant to the present subject; what was done during the time the right honorable witness was treasurer, constitutes no part of the present inquiry.

*Mr. Whitbread.*—The Commons propose to show, by the evidence of Mr. Bathurst, that the office could be conducted with perfect facility, notwithstanding the money was not lodged at the house of Messieurs Coutts; and, as the learned counsel for the noble defendant, have examined as to the facilities of office in consequence of money being lodged there, the Commons contend that they have a right to examine as to the facilities of office during the time the public money was lodged according to the act of parliament.

*Mr. Plumer.*—I have no objection to that mode of inquiry.

*Lord Chancellor.*—In that point of view, and for that purpose, it clearly is evidence.

*Mr. Whitbread.*—Where was the public money lodged at the time that you undertook the office of treasurer of the navy?

*Mr. Bathurst.*—I have no means of stating that.

*Mr. Whitbread.*—Do you know whether all the money was lodged in the Bank of England or elsewhere?

*Mr. Bathurst.*—I certainly know nothing of that.

*Mr. Whitbread.*—Did you discover that all



the money belonging to the Navy-pay-office, during the time of your holding that office, was not lodged in the Bank, or any part of it?

Mr. Bathurst.—I was so informed by Mr. Trotter, my paymaster.

Mr. Whitbread.—Did you receive that information originally from Mr. Trotter?

Mr. Bathurst.—I did.

Mr. Whitbread.—At what time did Mr. Trotter give you that information?

Mr. Bathurst.—I believe on my first entrance into the office. Perhaps I should state that I understood it to apply only to a small part, which it was found necessary for the convenience of the office, to deposit into the hands of a private banker instead of the whole remaining in the Bank.

Mr. Whitbread.—Did you direct the discontinuance of that practice?

Mr. Bathurst.—I did, in the course of my holding that office.

Mr. Whitbread.—At what time did you direct that discontinuance?

Mr. Bathurst.—In the course of the summer of the year 1802.

Mr. Whitbread.—Was your order complied with?

Mr. Bathurst.—It was.

Mr. Whitbread.—Were any representations made to you, or any remonstrances, on the discontinuance of that practice?

Mr. Bathurst.—Does the question mean to apply to the time previous or afterwards?

Mr. Whitbread.—Previous.

Mr. Bathurst.—Representations were made to me of the convenience supposed to accrue to the office from the practice, which I understood had prevailed, of keeping small sums of money in the hands of a private banker.

Mr. Whitbread.—Do you know what were the sums of money, or did you inquire what they were, which were so kept in the hands of a private banker?

Mr. Bathurst.—I did not.

Mr. Whitbread.—Did you receive any representation, upon the inconvenience arising from the money being replaced at the Bank, after such order of your's had been executed?

Mr. Bathurst.—I am not aware of any such representations, nor do I believe that any such were made to me.

Mr. Whitbread.—Are you acquainted with any inconvenience which resulted from the execution of your orders?

Mr. Bathurst.—Certainly not, personally; the office was conducted, during my time, by the paymaster, and, unless upon extraordinary occasions, representations were not made to the treasurer, I believe; certainly none such were made to me, by any person in any department in the office, or by any person having any demands upon the office.

Mr. Whitbread.—What are the duties of the treasurer of the navy?

Mr. Bathurst.—I must submit to your lordships, that I held that office for the space

of about eighteen months; that I have been out of that office for three years; and that your lordships are already apprized of the manner in which that office is conducted. I will now answer any question the honourable manager may put to me.

Mr. Whitbread.—The Commons wish to show what the duties of the treasurer of the navy are; and we think we cannot get at that information better than from a person who has been treasurer of the navy.

Lord Chancellor.—The Court understood that the object you had in view was to show that no inconvenience had arisen, during the witness's administration of the office, from the public money being lodged at the Bank, and not at a private banker's.

Mr. Whitbread.—In that part of the examination to which your lordships' attention was then addressed, such was the object stated by the Commons. The Commons have charged, that lord Melville, being treasurer of the navy, did not conduct himself properly in the discharge of that office. The Commons, therefore, contend, that they have a right to show to your lordships, what the duties were, which he had to execute; and therefore we call on Mr. Bathurst to state, what he conceived his duties to be, at the time he was treasurer of the navy.

Lord Chancellor.—There are certain duties cast upon public officers by law.

Mr. Whitbread.—But, my lords, it may not be before your lordships what the duties of his office are; I wish merely to ask Mr. Bathurst what were the duties of his office whilst he was treasurer of the navy.

A Lord.—I could wish that the honourable managers would state, what particular violation of the duty of the treasurer of the navy by lord Melville, they mean to show by the evidence of this witness.

Mr. Whitbread.—The counsel for the defendant have been asking in the course of this day, what are the duties of the office of the board of control, and they have not been stopped in that inquiry. The Commons state in their charge, that the office of treasurer of the navy, is one of great public importance, and one, in which the public are highly interested; and they submit to your lordships, they have a right to show what are those duties which have not been duly executed by lord Melville. They charge, that he has broken that particular part of his duty, which is enjoined him by law: namely, to place the money in the Bank of England exclusively. Now they wish to show, before your lordships, what were the duties that lord Melville had to execute generally, as treasurer of the navy; and, my lords, as the Commons opened to your lordships, that as all public offices are matters of interest to the public, and the due execution of them material and important to that public, so they opened to your lordships, that the office of treasurer of the navy, was one in which the public had a superior claim



upon the officer executing that office, to execute it most religiously; and for this reason, that that office was executed entirely by deputy; and that there was no laborious employment of any sort; and therefore, the salary paid for that office bound, in a more punctilious manner, the person holding it, to perform every part of the duty of that office. It is for that purpose that the Commons contend, that they have a right to examine Mr. Bathurst, as to the duties of that office.

*A Lord.*—My lords, the inquiry into a supposed misdemeanor in the course of an office, seems almost to preclude any question, whether we can inquire what are the duties of that office generally; and it seems to me, with all possible submission to your lordships, to be so important and proper a question, that I am extremely surprised (I do not mean to reflect upon the discretion of the honourable managers) that we have this question at so late a period in the proceeding, because the inquiry would have thrown a light upon that case in all its antecedent stages.

*Lord Chancellor.*—You are entitled, no doubt, to inquire into the duties of the office.

*A Lord.*—I only rise to express my concurrence with the noble lord, who has just spoken, with respect to the question, whether it be a duty of the office, that the money should be kept at the Bank; perhaps the act answers that question. But the duties of the office are to be collected in two ways: either the law has positively prescribed the duties, and you may collect them from the terms in which they are prescribed, or you are to collect them from the usage and practice of the office; and I apprehend that this is perfectly a competent question.

*Lord Chancellor.*—As far as the witness is acquainted with the usage and practice of the office, and as far as he can state how he himself was employed, and what duties he performed in the course of his treasurership of the navy, that undoubtedly he may speak to; but you cannot ask a question, the answer to which would be an inference of law, from the situation which he filled; but you may ask him, as treasurer of the navy, what he had to do, and what constituted his functions.

*Mr. Whitbread.*—My lords, I am afraid I have given your lordships unnecessary trouble, by not framing my question right, for it was for that purpose alone I made the inquiry. I would now ask Mr. Bathurst, what duties he executed as treasurer of the navy?

*Mr. Bathurst.*—Your lordships have been already informed that it had been the practice of my predecessor—I found that it had been the practice of the noble viscount at your lordships' bar—it had been the practice of another member of your lordships' house, whom I succeeded, Mr. Ryder,—to delegate all the power of issuing and receiving money from the Bank to the paymaster; that was done by a general power of attorney, consequently the payment transactions, which, I presume, are more im-

mediately the subject of your lordships' inquiry, were conducted by the paymaster; references were made to me in particular cases; and in other branches of the office not relating to the payment of money, and in a variety of other transactions, references were made to me sometimes daily, sometimes at considerable intervals; but with respect to the payment and receipt of money, in all the various branches of the office, that was conducted entirely by the paymaster.

*Mr. Whitbread.*—The Commons then presume they are to understand, from the answer last given, that the paymaster acted for the treasurer in all payments, under a general power of attorney, and acted in all the routine of business, with regard to receipts and payments of money, without the interference of the treasurer?

*Mr. Bathurst.*—He did so; except in a case of any extraordinary reference that might be made to the treasurer.

*Mr. Whitbread.*—Did he perform all the principal duties of the office?

*Mr. Bathurst.*—Certainly so.

*Mr. Whitbread.*—Did Mr. Trotter continue to be your paymaster to the conclusion of your treasurership?

*Mr. Bathurst.*—He did.

Then the right honourable *Charles Bragge Bathurst* was cross-examined, as follows:

*Mr. Plumer.*—Whether payments in very small sums, sometimes under 20s., are not daily made in the office to sailors and their relatives?

*Mr. Bathurst.*—From what I have stated already, your lordships will perceive it is not in my power personally to answer that question.

*Mr. Plumer.*—Was it not the course of office that they should be paid in that manner?

*Mr. Bathurst.*—I have no other means of answering that question than a persuasion that there must be small sums, and of course that small demands would be paid.

*Mr. Plumer.*—Which department did the payment of seamen's wages in London arise in?

*Mr. Bathurst.*—In one of the sub-accountants I apprehend, and not of the paymaster personally.

*Mr. Plumer.*—The sub-accountant receiving a supply from the paymaster?

*Mr. Bathurst.*—The supply received from the paymaster, I apprehend to be in advances of some magnitude, supposed to be adequate to the demands in that department for a limited time.

*Mr. Plumer.*—Do you know whether, posterior to the alterations you made in the summer of 1802, those small payments continued the same as before?

*Mr. Bathurst.*—I presume they did.

*Mr. Plumer.*—I understood you to state, that the general duties and business of the office, especially with respect to receipts and pay-



ments, were delegated altogether to the paymaster, and that you did not interfere in that business, except when your attention was called to it by reference; by whom was the reference made to you, when your attention was called to any of the business that was going on?

Mr. Bathurst.—Always by the paymaster, if he was in the office; if he was absent, as he was a short time, during the time I remained in the office, it would probably be made by Mr. Wilson, who acted in his absence for him.

Then the right honourable *Charles Bragge Bathurst* was re-examined, as follows:

Mr. Whitbread.—Was it a part of your duty, as treasurer of the navy, and had you the power and control over the paymaster?

Mr. Bathurst.—Certainly; I consider the paymaster as my immediate deputy, for whose acts I am responsible, and who is amoveable, I understood, at a moment.

Mr. Whitbread.—Was it in consequence of the duty cast upon you, and the authority you were vested with, that you made that order to discontinue the money being in the hands of a private banker, instead of in the Bank?

Mr. Bathurst.—Certainly, in consequence of the power I conceived I had over the whole of that office.

Mr. Whitbread.—Do you know of your own knowledge, whether the paymaster ever made any small payments with his own hands?

Mr. Bathurst.—The whole subject of payments is totally out of my personal knowledge.

Mr. Whitbread.—We wish to understand whether the payment of those small sums of money, according to the course and practice of the office, was in the hands of the paymaster and at his disposition, or in the hands of the sub-accountants?

Mr. Bathurst.—I apprehend it to be made by the sub-accountants.

Mr. Whitbread.—Is that letter and the signature to it your hand-writing?

Mr. Bathurst.—It is.

[The witness was directed to withdraw.]

Mr. Whitbread.—The Commons next propose to call Mr. Thomas Wilson.

Then Mr. *Thomas Wilson* was called in, and, being sworn, was examined as follows:

Mr. Whitbread.—Are you an officer in the Navy-pay-office.

Mr. Wilson.—I am.

Mr. Whitbread.—How long have you been in that office.

Mr. Wilson.—I was appointed to the office in the year 1786.

Mr. Whitbread.—What is the situation you now hold in the office.

Mr. Wilson.—The situation I now hold in the office is that of chief clerk in what is called the branch for the payment of officers bills.

Mr. Whitbread.—Is it not called the bill and remittance branch?

Mr. Wilson.—It is.

Mr. Whitbread.—How long have you filled that situation?

Mr. Wilson.—To the best of my recollection, from the year 1795 or 1796; I cannot be positive.

Mr. Whitbread.—Look at the signature to that paper, is that your hand-writing?

Mr. Wilson.—It is.

Mr. Whitbread.—What does that paper purport to be?

Mr. Wilson.—An account of the balances of public money in the hands of the treasurer of his majesty's navy, his different cashiers or sub-accountants, made up to the 31st of December in each year since 1790, with the amount of the sums standing in the treasurer's name in the Bank at such periods.

Mr. Whitbread.—Is not that a return to a precept which was issued by the commissioners of naval inquiry?

Mr. Wilson.—It is.

Mr. Whitbread.—Is there an erasure upon that paper immediately under your name?

Mr. Wilson.—There certainly appears to be so.

Mr. Whitbread.—Do you recollect having written any thing that was erased in your presence, or by you, under that name?

Mr. Wilson.—I believe that Mr. Trotter had previously signed this account; but as the requisition was sent from the commissioners of naval inquiry to myself, that he afterwards thought it would be more proper that I should make the return.

Mr. Whitbread.—What were the words that stood upon the paper, before the erasure under your name?

Mr. Wilson.—I believe it was the name of Alexander Trotter.

Lord Chancellor.—Do you know that it was?

Mr. Wilson.—I cannot recollect the precise words.

Mr. Whitbread.—Did you make up that account yourself?

Mr. Wilson.—I did.

Mr. Whitbread.—Why did not Mr. Trotter make up that account?

Mr. Wilson.—Mr. Trotter was not then in London.

Mr. Whitbread.—What is the date of that account?

Mr. Wilson.—There does not appear to be any date to the account.

Mr. Whitbread.—What is the date of the letter transmitting that account?

Mr. Wilson.—The second day of February, 1803.

Mr. Whitbread.—How long had Mr. Trotter been absent from the Navy-pay-office, at the time when that return was made?

Mr. Wilson.—I have no recollection.

Mr. Whitbread.—Do you recollect the period of Mr. Trotter's return to London, after his absence?



Mr. Wilson.—I only presume that it must be about the beginning of the month of February, from the date of this letter.

Mr. Whitbread.—Do you know precisely that it was upon the 2nd day of February, when that is dated?

Lord Chancellor.—Do you know the day on which he did return?

Mr. Wilson.—I cannot swear that; I only presume he returned on the second of February.

Mr. Whitbread.—Do you recollect whether Mr. Trotter came to town upon the day when that return was made?

Mr. Wilson.—I signed this account upon the day of Mr. Trotter's return, but whether the return was sent to the commissioners of naval inquiry upon that day or the day following I cannot presume to say.

Mr. Whitbread.—Then you know that Mr. Trotter returned to London on the day on which you made up that return; it is in evidence that that return was made upon the second of February. Were you confidentially employed by Mr. Trotter?

Mr. Wilson.—I was.

Mr. Whitbread.—Were you in the habit of corresponding with Mr. Trotter in his absence, as his confidential agent?

Mr. Wilson.—I was not Mr. Trotter's agent; I was his confidential friend, and was in the habit of corresponding with him.

Mr. Whitbread.—Did you correspond with him daily, during his absence?

Mr. Wilson.—Almost daily.

Mr. Whitbread.—Being in the course of correspondence with him, do you know where he was just before the time that return was made to the commissioners?

Mr. Wilson.—I do not exactly know, but I presume he was at Edinburgh at the time.

Mr. Whitbread.—Do you recollect the precept from the commissioners of naval inquiry coming to the office, during the absence of Mr. Trotter?

Mr. Wilson.—I believe it did.

Mr. Whitbread.—Did you transmit an account of that precept to Mr. Trotter in Scotland?

Mr. Wilson.—I do not think that I transmitted either the precept or a copy of it; but I am confident that I gave Mr. Trotter information of it.

Mr. Plumer.—My lords, I am permitting a great deal of irregular examination. Almost every question that has been put to the witness has been an illegal question. All this is a communication between Mr. Trotter and one of his friends: what has that to do with the present defendant?

Mr. Whitbread.—My lords, the Commons wish to show your lordships, that at the time this precept was issued, Mr. Trotter was absent from London, and that he was in Scotland; they wish to prove that the date of this precept corresponds with the time of his absence; they mean to show that he returned

on the very day when the return was made to this precept; they have shown the date of Mr. Trotter's release; it is to bear upon that point that the Commons are making this examination.

Mr. Plumer.—If any thing turns upon where Mr. Trotter was in the month of February, or the month of January 1803, and it is proper to prove it, it must be proved by some witness who saw him, and who knew where he was. I submit to your lordships it cannot be proved in this mode, if it is in the least material.

Mr. Whitbread.—Whether it be material or not, it is for the Commons to consider. I wish to know to what part of the United Kingdom the witness addressed the letters to Mr. Trotter, being in the habit of daily correspondence with him?

Mr. Plumer.—That is not competent evidence.

Lord Chancellor.—You may examine Mr. Trotter himself to this.

Mr. Plumer.—My lords, Mr. Trotter has given evidence upon the subject already.

Mr. Whitbread.—Did you, in the capacity of a confidential friend of Mr. Trotter, draw money during his absence, in his official concerns.

Mr. Plumer.—My lords, this cannot be evidence, what he did in his character of confidential friend to somebody else than lord Melville.

Mr. Whitbread.—My lords, the Commons wish to show that the public money was put beyond the control of the treasurer; and further, that the treasurer had so loosed his hold on the public money, that it was put beyond the reach of his paymaster; and is it not competent to the Commons to show that Mr. Trotter entrusted that power, which had been so entrusted to him, out of his own hands into the hands of another?

Lord Chancellor.—You must show that by the acts of Mr. Trotter, or by his own evidence of them.

Mr. Whitbread.—My lords, it may be necessary to recur to the evidence that has been given, that Mr. Trotter distinctly stated, in his evidence before your lordships, that he had given that power to the witness.

Mr. Plumer.—My lords, I now understand that the examination proposed to be given, relates to the authority and power which Mr. Trotter possessing as paymaster, parted with to another person. Now, whether there be any impropriety in Mr. Trotter's appointing anybody else to do any part of his business is not the question. We are not now trying Mr. Trotter, but lord Melville. If that was an improper act, you must show whether that act was done with the privity and knowledge, or by the authority of the defendant. All the acts of Mr. Trotter, right or wrong, what have they to do with the defendant, unless they were authorized directly or indirectly by him? It seems to me it cannot possibly be material



to inquire what delegation of authority Mr. Trotter gave to any body else.

Mr. *Whitbread*.—My lords, the Commons contend they have a right to show, when a public officer, in defiance of his duty, has done a certain act, what was the consequence of those acts, or what it might have been; Mr. Trotter has proved that he gave unlimited authority to Mr. Wilson. The Commons wish now to ask Mr. Wilson whether he acted under that authority.

A *Lord*.—All the consequences that either necessarily or properly result from the authority, with which lord Melville invested his paymaster, might, I think, be given in evidence; but the consequences that result from the mere individual misconduct of his paymaster, (and such it is at present stated to be) cannot I conceive be given in evidence to affect lord Melville, unless the managers can show some subsequent knowledge on the part of lord Melville of such an authority being given to Mr. Wilson, and his recognition and approbation of it; and, unless it is proposed to give that further proof, I submit the present evidence is incompetent.

Mr. *Whitbread*.—My lords, the Commons have shown, or can show, that during the absence of Mr. Trotter, Mr. Wilson made payments to lord Melville's account with public money, which he could not have done, unless he had an authority delegated to him by Mr. Trotter to act in his absence, in his official capacity; and therefore the Commons contend that they can bring such knowledge home to lord Melville; and that he could not be ignorant of Mr. Wilson's transactions; but I will put one question to Mr. Wilson, which will set that matter in a clear point of view.

Do you recollect a transaction, with regard to a sum of 40,000*l.* in or about the year 1796, in which lord Melville had any concern?

Mr. *Wilson*.—I do.

Mr. *Whitbread*.—State that to the Court.

Mr. *Wilson*.—Lord Melville sent for me, and desired to know whether a sum of money could be spared from the public account; I told him that the sum of 40,000*l.* might be spared from the public account, and he desired me to bring it accordingly.

Mr. *Whitbread*.—Did you act upon lord Melville's direction in that respect?

Mr. *Wilson*.—Most certainly.

Mr. *Whitbread*.—Was Mr. Trotter in London at that time.

Mr. *Wilson*.—I believe not.

Mr. *Whitbread*.—Was Mr. Trotter at the Pay-office at that time?

Mr. *Wilson*.—Consequently he was not at the Pay-office; he was not in London.

Mr. *Whitbread*.—Did you make a communication of that transaction to Mr. Trotter by letter?

Mr. *Wilson*.—I did.

Mr. *Whitbread*.—Did lord Melville know that you had an authority from Mr. Trotter to draw upon the public account?

Mr. *Wilson*.—I presume so.

Mr. *Whitbread*.—Did you act under that authority generally, or occasionally, given to you by Mr. Trotter during his absences, either in Scotland or elsewhere, subsequent to that transaction?

Mr. *Wilson*.—I certainly did, subsequent to that transaction.

Mr. *Whitbread*.—Both from the house of Messieurs Coutts' and from the Bank?

Mr. *Wilson*.—Yes.

Mr. *Whitbread*.—What was the mode in which you drew for the public money, subsequent to that transaction, either from Messieurs Coutts', or from the Bank?

Mr. *Wilson*.—When I drew money from the Bank, it was in blank checks, signed by Mr. Trotter, which were lodged in my custody; when I drew upon his account at Messieurs Coutts' I signed—"Thomas Wilson, for Alexander Trotter."

Mr. *Whitbread*.—Were you employed by Mr. Trotter, subsequent to this transaction, to employ public money for Mr. Trotter's private advantage?

Mr. *Wilson*.—Certainly I was.

Mr. *Whitbread*.—Did you act upon that authority?

Mr. *Wilson*.—I did, certainly.

Mr. *Whitbread*.—Can you state to what extent?

Mr. *Wilson*.—I cannot state to what extent; but certainly I did to a considerable extent.

Mr. *Whitbread*.—Are you conversant in the business of the Navy-pay-office?

Mr. *Wilson*.—I have a general knowledge of it.

Mr. *Whitbread*.—Do you know, of your own knowledge, whether the paymaster of the navy ever makes small cash payments to the payees, or that he makes them, by the custom of the office, through the sub-accountants?

Mr. *Wilson*.—Excepting the payment of fees upon money received from the exchequer, the paymaster makes no other payments, but in large round sums to the sub-accountants.

Mr. *Whitbread*.—Describe what the nature of the exchequer-fee-money is, as contradistinguished from the other public money of the office?

Mr. *Wilson*.—I have no further knowledge of it than this, that it has always been the practice of the office, ever since I belonged to it, that certain sums of money, amounting to 3,000*l.* at a time, have been issued from the exchequer, and placed in the hands of the paymaster, for the purpose of paying those fees upon money received at the exchequer.

Mr. *Whitbread*.—Have you ever yourself had the custody of the exchequer-fee-money?

Mr. *Wilson*.—Yes.

Mr. *Whitbread*.—Did you derive any profit or advantage from that custody?

Mr. *Wilson*.—I certainly did.

Mr. *Whitbread*.—What was the average amount of the balance left in your hands of exchequer-fee-money?



Mr. Wilson.—It never could amount to 6,000*l.*

Mr. Whitbread.—Might not the advantage upon the average be computed at or about 300*l.* a year?

Mr. Wilson.—I do not think it possible that it could amount to so much.

Mr. Whitbread.—When was the exchequer-fee money delivered over into your custody?

Mr. Wilson.—I speak upon conjecture, but I believe some time about the year 1800.

Mr. Whitbread.—How long did it continue in your custody?

Mr. Wilson.—Until the treasurership of Mr. Canning, when I paid over the balance of exchequer fees into his paymaster's hands.

Mr. Whitbread.—Whom did you receive the exchequer-fee-money from?

Mr. Wilson.—Mr. Trotter.

Mr. Whitbread.—Had Mr. Trotter had it, to your knowledge, a considerable time previous to the period you last mentioned?

Mr. Wilson.—I presume Mr. Trotter had it from the time of his becoming paymaster of the navy.

Mr. Whitbread.—Did Mr. Trotter waive the custody of that exchequer-fee-money expressly for your benefit?

Mr. Wilson.—I presume that he did; he certainly derived an advantage from it himself, and I made the same use of it that he did.

Mr. Whitbread.—Has not the exchequer-fee-money always been considered, according to the practice of the office, as a fund totally distinct from the other cash in the office?

Mr. Wilson.—In the course of my business in the office, I do not recollect that it has ever been made use of for any other purpose, unless for private advantage.

Mr. Whitbread.—Is it a fund totally distinguished from the other funds of the office?

Mr. Wilson.—It is not—it forms a part of the minor heads of service, which the commissioners of his majesty's navy direct.

Mr. Whitbread.—Are any other payments made from that fund, except for payment of exchequer fees.

Mr. Wilson.—None; excepting, I believe, small fees have been paid upon the declaration of the accounts of the treasurer of the navy.

Mr. Whitbread.—Are any payments made out of that fund, except for fees of one description or another, according to the course and practice of the office?

Mr. Wilson.—None that I know of.

Mr. Whitbread.—Did you ever converse with lord Melville upon the business of the office?

Mr. Wilson.—I do not recollect that I ever did.

Then Mr. Thomas Wilson was cross-examined as follows:

Mr. Plumer.—You have been asked respecting a transaction in the year 1796, of a

sum of 40,000*l.* that was drawn from the Bank, and paid to Mr. Pitt. Is that the same sum of money which was afterwards the subject of public inquiry in the House of Commons.

Mr. Wilson.—I believe so.

Mr. Plumer.—You have said that you were in the habit of laying out some of the public money for Mr. Trotter's private emolument, I desire to know whether, in any instance of your having done that, it was ever done with the privity and knowledge of lord Melville?

Mr. Wilson.—I solemnly believe not.

Mr. Plumer.—You were asked respecting some small payments: I understood you to state, that those small payments are not paid by the hand of the paymaster himself. By whom are the small payments, that are daily made in London, to sailors and their relatives, that call for very small sums, made?

Mr. Wilson.—Those small payments are made in the allotment branch of the Pay-office, and the payments themselves are made by Mr. Lawson, in that office, who is chief clerk to the cashier for the allotment branch.

Mr. Plumer.—Are there not also small payments in another branch for wages to seamen?

Mr. Wilson.—I do not know that of my own knowledge, because I do not belong to that department, but I am confident that small payments are made in vast numbers in the Pay branch.

Mr. Plumer.—Are those small payments, which you say you believe are made in vast numbers in the Pay branch, many of them even under the sum of twenty shillings?

Mr. Wilson.—I believe so.

Mr. Plumer.—Do they occur daily in considerable numbers in the allotment branch, under that sum?

Mr. Wilson.—I believe so.

Mr. Plumer.—To what description of persons are those small payments made?

Mr. Wilson.—They are made to the wives and to the children of sailors.

Mr. Plumer.—Does not the clerk who pays the money derive his supply of cash for that purpose from the paymaster?

Mr. Wilson.—I believe, in the first instance, the paymaster advances a certain sum of money to the chief of that department, and that the clerk who makes those small payments is supplied from him.

Mr. Plumer.—Are those payments always made in cash?

Mr. Wilson.—I believe so.

Mr. Plumer.—Are they so down to the present time?

Mr. Wilson.—I believe so.

A Lord.—Having stated to the Court that Mr. Trotter, in his absence, used to leave blank drafts which you filled up, and then made use of them by drawing upon the Bank, Have you any reason to know that lord Melville was acquainted that that trust was so reposed in you by Mr. Trotter?

Mr. Wilson.—I have no other reason to



imagine it than this, that I had an authority, by virtue of a power of attorney from Mr. Trotter, to draw upon the Bank of England, and consequently I did draw by the blank checks signed by Mr. Trotter.

*Lord Chancellor.*—The question proposed to you is this:—Have you reason to know that lord Melville was acquainted with the trust reposed in you by Mr. Trotter, namely, that he left you blank drafts, which you filled up, and drew upon the Bank?

*Mr. Wilson.*—I never had any conversation with lord Melville upon that subject; and, for any thing I know, his lordship is perfectly ignorant, whether Mr. Trotter gave me any authority whatever.

*A Lord.*—Am I to understand that you are not able to swear that lord Melville was privy to that trust reposed in you by Mr. Trotter?

*Mr. Wilson.*—I cannot swear it, any further, than by the evidence I have already given to the Court.

*A Lord.*—Are you able to swear, of your own knowledge, that lord Melville was acquainted with this trust?

*Mr. Wilson.*—I cannot swear, on my knowledge, because no conversation ever passed between lord Melville and me upon the subject.

*A Lord.*—Had you the same trust reposed in you by Mr. Trotter, during the other treasurerships of Mr. Ryder, Mr. Bathurst, and Mr. Canning?

*Mr. Wilson.*—I certainly had.

*A Lord.*—Have you any reason to know, or can you swear, that these gentlemen were acquainted with it?

*Mr. Wilson.*—I cannot swear to it, because I never had any conversation with those gentlemen upon the subject.

*A Lord.*—Was the draft for 40,000*l.* upon the Bank of England exactly for that sum?

*Mr. Wilson.*—I cannot answer that question.

*A Lord.*—If you had not had blank drafts from Mr. Trotter, how could you have got that sum from the Bank of England?

*Mr. Wilson.*—I presume that I had drawn a much larger sum from the Bank of England, and placed it to the account of Mr. Trotter at Mr. Coutts's house, and from thence, that I had drawn the sum of 40,000*l.*

*A Lord.*—Are you certain that the 40,000*l.* or any part of it, was drawn from Mr. Coutts's house, and not directly from the Bank?

*Mr. Wilson.*—I cannot swear to that; but I believe from Mr. Coutts's house.

*A Lord.*—You have stated, that a conversation passed between you and lord Melville himself; at what time did that conversation pass?

*Mr. Wilson.*—I cannot recollect.

*A Lord.*—In what year was it?

*Mr. Wilson.*—I believe it was in the year 1798; but I speak merely from guess.

*A Lord.*—Are you sure that lord Melville asked you, whether a certain sum of money could be spared from the public account?

*Mr. Wilson.*—To the best of my recollection, lord Melville did put that question to me.

*A Lord.*—Did lord Melville desire you to ask Mr. Trotter that question, or desire you yourself to bring that money?

*Mr. Wilson.*—My lord Melville desired me to bring it to him, Mr. Trotter being at that time in Scotland.

*A Lord.*—Did lord Melville propose to give you any authority for receiving that sum of money, or did he leave you to bring it under any authority you might have, independently of his lordship?

*Mr. Wilson.*—His lordship made no mention of that circumstance to me at all.

*A Lord.*—In this conversation with lord Melville, was the sum of 40,000*l.* being to be spared from the public office mentioned by his lordship to you, or by you to his lordship?

*Mr. Wilson.*—By me to his lordship.

*A Lord.*—Was any other sum mentioned to lord Melville?

*Mr. Wilson.*—Not to my recollection.

*A Lord.*—How did that sum of 40,000*l.* occur in the conversation?

*Mr. Wilson.*—It was upon my own suggestion, upon the examination of the books, that I thought that sum of 40,000*l.* could be spared.

*A Lord.*—Did you offer the 40,000*l.* as the amount of all that, at that time, could be spared?

*Mr. Wilson.*—I thought so.

*A Lord.*—In case of the absence of the paymaster from illness, or from any other cause, was it absolutely necessary that the business of the office should be performed by some other person acting for him?

*Mr. Wilson.*—Most unquestionably.

*A Lord.*—Having said, that it was necessary that the business of the office should be forwarded, in the absence of the paymaster; did your situation in the office, at that time, point you out obviously as the fittest person in whom that trust could be reposed, when such a trust became necessary?

*Mr. Wilson.*—Certainly, in my situation in the office, I was not next to the paymaster to carry on that duty in his absence; but the private friendship for, and confidence Mr. Trotter had in me, pointed me out, I presume, to him for that purpose.

*A Lord.*—Does any instance come within your knowledge, excepting that of your own, in which such delegation has been necessary from the absence of the paymaster; and, if so, has it been made by power of attorney, or in the same manner you executed this duty of Mr. Trotter's?

*Mr. Wilson.*—I know of no such circumstance.

*A Lord.*—Having said that this 40,000*l.* was spoken of by you to lord Melville, and not by lord Melville to you, and that from the examination of the books you stated that that sum could be spared, was that examination of



the books at the time of this conversation?—were the books there?

Mr. Wilson.—No.

A Lord.—Were there two conversations, or one conversation?

Mr. Wilson.—Only one conversation, until such time as I paid the money.

A Lord.—If it was from the examination of the books, that you told lord Melville 40,000*l.* could be spared from the public money, had you made that examination previous to the conversation?

Mr. Wilson.—I had a general knowledge of the state of the balances, and every morning I had occasion to look into these books, and therefore I do not know whether I did either immediately preceding that conversation, or immediately afterwards, examine the books again.

A Lord.—From what did you make your calculation that that sum could be spared?

Mr. Wilson.—It requires a general knowledge of the Pay-office to be able to ascertain that, and I possessed that information.

A Lord.—Was this communication with lord Melville, upon the subject that this money could be spared, made verbally, in conversation with lord Melville, as you have stated it, or did you make any communication to his lordship in writing?

Mr. Wilson.—None in writing, it was all done verbally.

A Lord.—When you went to lord Melville upon the subject, at the time you had the conversation, did you know what you were going about?

Mr. Wilson.—I did not.

A Lord.—Had you authority to draw upon any other account than for Mr. Trotter's private use?

Mr. Wilson.—Certainly, for the public service.

A Lord.—Had you for any other purpose than the public service?

Mr. Wilson.—Yes, Mr. Trotter's private accounts.

A Lord.—Had you any other authority, but for the public service, or Mr. Trotter's private use?

Mr. Wilson.—I had not.

A Lord.—Nor in effect did you ever draw any, except for the public service, or for the private use of Mr. Trotter?

Mr. Wilson.—Never, to the best of my recollection, unless it was on account of the Exchequer fees, of which I made a private advantage.

A Lord.—To whom did you pay that 40,000*l.*?

Mr. Wilson.—I do not know into whose hands I paid the bank-notes, but it was in the presence of lord Melville and Mr. Long of the Treasury.

A Lord.—At the time that payment was made, did you receive any acknowledgment, or receipt of having made that payment?

Mr. Wilson.—None.

A Lord.—In what manner did you enter that sum of 40,000*l.* in your account?

Mr. Wilson.—I kept no account of it myself.

[The witness was directed to withdraw.]

Then George Swaffield, esquire, was again called in, and examined as follows:

Mr. Whitbread.—You have proved you have been upwards of sixty years in the Navy-pay-office: have you, during any part of that time, kept any part of the public money entrusted to you, except in the Bank of England or in your own possession?

Mr. Swaffield.—Not till of late years.

Mr. Whitbread.—Have you kept any part of it of late years at the house of Messieurs Coutts.

Mr. Swaffield.—That was the only private bank I ever made use of.

Mr. Whitbread.—Why did you put your money there?

Mr. Swaffield.—Mr. Trotter required it of me.

Mr. Whitbread.—Were you willing so to do?

Mr. Swaffield.—It was done reluctantly.

Mr. Whitbread.—Did you find any convenience resulting from having the money at Mr. Coutts's.

Mr. Swaffield.—None at all.

Mr. Whitbread.—Did you find it produced any confusion in your accounts?

Mr. Swaffield.—In two instances I was rather perplexed about it.

Then George Swaffield, esquire, was cross-examined as follows:

Mr. Plumer.—Whether this desire of Mr. Trotter to you, to keep your money at Messieurs Coutts's, was a desire to which lord Melville was to your knowledge privy?

Mr. Swaffield.—I do not know that he was.

[The witness was directed to withdraw.]

Then the right honourable George Tierney was called.

Mr. Tierney stood in the gallery appointed for the House of Commons, from whence he offered to give evidence.

Lord Chancellor.—I think there ought to be no difference between one witness and another, as to the place in which he is examined. It is the privilege of the lords to say where a witness is to be placed upon his examination.

Mr. Tierney.—My lords——

Lord Chancellor.—I apprehend we can hear no argument from a member of the House of Commons; and that, if the gentleman is to be examined, he must stand in the witness' place.

Mr. Whitbread.—While Mr. Tierney is coming round to the witness' box, I wish the



clerk may be directed to read the balances proved to be signed, as delivered in by Mr. Wilson, accompanied by the letter of Mr. Bathurst, who was then treasurer of the navy.

Then the following papers were delivered in and read:

“Navy-pay-office, 2nd February 1803.

“Gentlemen;

“In conformity to your precepts of the 17th and 25th ultimo, I have the honour to transmit herewith an account of the balances of public money in the hands

of the treasurer of his majesty's navy for the time being, his different cashiers or sub-accountants, made up to the 31st of December in each year, since 1790, with the amount of the sums standing in the treasurer's name, in the Bank at such periods.

I have the honour to be, gentlemen,

Your most obedient

And most humble servant,

CHARLES BRAGGE.

Commissioners of Naval Enquiry,  
&c. &c. &c.”



An ACCOUNT of the Balances of Public Money in the Hands of the Treasurer of His Majesty's Navy, his different Cashiers or Sub-accountants, made up to the 31st of December in each Year, since 1790, with the Amount of the Sums standing in the Treasurer's Name in the Bank at such Periods.

| 31st December.                                                                                           | 1790.         | 1791.         | 1792.         | 1793.         | 1794.         | 1795.          | 1796.        |
|----------------------------------------------------------------------------------------------------------|---------------|---------------|---------------|---------------|---------------|----------------|--------------|
|                                                                                                          | £. s. d.      | £. s. d.      | £. s. d.      | £. s. d.      | £. s. d.      | £. s. d.       | £. s. d.     |
| The Treasurer of the Navy.....                                                                           | 102,897 16 1½ | 93,443 7 2    | 88,219 1 5    | 148,012 9 0   | 190,119 5 5   | 555,755 4 2    | 255,261 11 9 |
| Cashier of the Navy .....                                                                                | 10,792 2 9½   | 27,487 13 3½  | 21,856 6 7½   | 54,636 18 0   | 70,181 19 11  | 185,400 14 5½  | 63,900 9 11  |
| Cashier of Victualling .....                                                                             | 3,109 10 8½   | 26,920 11 4   | 8,684 10 7    | 20,041 15 11½ | 88,193 9 8½   | 86,070 14 7½   | 11,059 1 2   |
| Deputy Paymaster .....                                                                                   | 81,276 11 5½  | 68,007 10 0½  | 77,221 14 10½ | 73,583 9 1½   | 75,404 17 0   | 77,724 9 4     | 71,485 19 10 |
| Cashiers at Portsmouth .....                                                                             | 66,086 12 0   | 52,854 0 2    | 49,327 1 1½   | 88,200 6 4½   | 114,829 14 11 | 76,132 14 10½  | 79,231 5 1   |
| Cashiers at Plymouth.....                                                                                | 61,195 14 5½  | 51,047 5 4½   | 47,308 4 3½   | 72,074 11 0   | 94,903 8 3½   | 75,797 1 11½   | 76,879 11 0½ |
| Cashiers at Chatham .....                                                                                | 53,995 10 4½  | 49,318 11 1½  | 37,212 15 3½  | 56,943 11 4½  | 59,532 8 6    | 60,167 9 4½    | 69,206 17 8½ |
| Cashiers at Sheerness .....                                                                              | —             | —             | —             | —             | —             | —              | —            |
| Cashier of Allotment .....                                                                               | —             | —             | —             | —             | —             | 2,249 12 9½    | 2,469 7 1½   |
| Exchequer Fees .....                                                                                     | 6,509 14 10   | 7,167 16 6    | 6,702 6 11    | 5,780 9 9     | 7,668 1 6     | 13,668 1 6     | 9,484 4 11   |
| Aggregate of Treasurer's Balances                                                                        | 385,863 12 1  | 376,246 15 0½ | 336,532 1 0½  | 519,273 10 7  | 700,833 5 2½  | 1,132,966 3 0½ | 638,978 8 6  |
| Balances of Account of the Treasurer of his Majesty's Navy at the Bank at the Periods above stated ..... | 102,897 16 1  | 73,454 17 6   | 61,742 1 9    | 120,986 11 3  | 161,360 17 8  | 525,438 8 1    | 179,848 6 9  |



(Continued from preceding page.)

| 31st December.                                                                                          | 1797.          | 1798.         | 1799.         | 1800.         | 1801.         | 1802.        |
|---------------------------------------------------------------------------------------------------------|----------------|---------------|---------------|---------------|---------------|--------------|
|                                                                                                         | £. s. d.       | £. s. d.      | £. s. d.      | £. s. d.      | £. s. d.      | £. s. d.     |
| (1st Column repeated.)                                                                                  |                |               |               |               |               |              |
| The Treasurer of the Navy .....                                                                         | 160,453 8 4    | 196,301 10 6  | 353,051 4 0   | 386,422 9 6   | 429,663 0 0   | 127,000 0 0  |
| Cashier of the Navy .....                                                                               | 144,907 15 11½ | 109,724 6 0   | 93,746 2 1½   | 121,131 11 8½ | 1,606 11 1    | 6,098 8 1½   |
| Cashier of Victualling.....                                                                             | 39,074 8 8½    | 54,969 1 6½   | 50,356 11 7½  | 60,221 6 7½   | 75,440 12 11½ | 16,069 11 6½ |
| Deputy Paymaster .....                                                                                  | 33,246 0 6½    | 33,567 12 11½ | 33,995 17 8½  | 49,026 10 9½  | 59,430 17 3   | 7,686 8 2    |
| Cashiers at Portsmouth .....                                                                            | 30,344 4 0½    | 24,036 6 6½   | 26,935 16 3½  | 76,117 1 5½   | 124,410 14 1½ | 16,947 9 9½  |
| Cashiers at Plymouth .....                                                                              | 34,561 14 11   | 39,749 14 6   | 40,314 7 11½  | 101,817 14 6½ | 125,540 0 9   | 39,549 16 8½ |
| Cashiers at Chatham .....                                                                               | 23,154 13 1½   | 16,898 3 9    | 23,580 18 10½ | 42,664 14 7½  | 61,273 0 4½   | 29,430 14 8½ |
| Cashiers at Sheerness .....                                                                             | —              | —             | —             | 39,601 11 0½  | 54,391 17 6   | 475 8 6½     |
| Cashier of Allotment .....                                                                              | 2,682 17 9     | 17,260 15 5½  | 44,364 1 5½   | 4,919 11 5½   | 6,694 19 6    | 12,425 18 6½ |
| Exchequer Fees .....                                                                                    | 12,478 6 7     | 12,278 17 11  | 21,278 17 11  | 14,587 6 7    | 12,765 19 11  | 12,540 0 0   |
| Aggregate of Treasurer's Balances                                                                       | 480,903 9 11½  | 504,786 9 1½  | 687,623 18 0½ | 896,509 18 4½ | 951,217 13 5½ | 268,230 3 9½ |
| Balances of Account of the Treasurer of his Majesty's Navy at the Bank at the Periods above stated..... | 101,812 13 6   | 142,160 15 6  | 298,910 9 0   | 386,422 9 6   | 429,663 0 0   | 127,000 0 0  |

THOMAS WILSON.



Mr. *Whitbread*.—There was another paper of balances, the letter accompanying which was signed George Canning, Mr. Canning being then treasurer of the Navy: if the learned counsel will admit Mr. Canning's hand-writing it may save the time of the court.

Lord Chancellor.—The signature of Mr. Canning will not, any more than the signature of Mr. Bathurst, prove any thing, unless the figures are shown to be made by himself.

Then Mr. *Thomas Wilson* was again called in, and examined as follows:

Mr. *Whitbread*.—Do you know the hand writing upon the paper now in your hand?

Mr. *Wilson*.—I believe it to be the hand writing of Mr. Gandy, belonging to the Navy-pay-office.

Mr. *Whitbread*.—Are these returns of balances, to the commissioners of naval inquiry, the result of your own calculation?

Mr. *Wilson*.—I am not competent to answer that question.

[The witness was directed to withdraw.]

Then Mr. *William Gandy* was called in, and being sworn, was examined as follows:

Mr. *Whitbread*.—Are you a clerk in the Navy-pay-office?

Mr. *Gandy*.—I am.

Mr. *Whitbread*.—Is that paper in your hand of your hand writing?

Mr. *Gandy*.—It is.

Mr. *Whitbread*.—Is that the return to the precept of the naval commissioners, requiring returns from the office, of the balances of the treasurer of the Navy?

Mr. *Gandy*.—I cannot answer that question.

Mr. *Whitbread*.—What is it?

Mr. *Gandy*.—It appears to be an account of balances of public money in the hands of the treasurer of the navy.

Mr. *Whitbread*.—By whom were you directed to make up that paper?

Mr. *Gandy*.—I rather suppose by Mr. *Wilson*, being a clerk under his branch; part of this writing is in Mr. *Wilson*'s hand, and part in my own.

Lord Chancellor.—Is all of it in either your hand or that of Mr. *Wilson*?

Mr. *Gandy*.—The balances are in Mr. *Wilson*'s hand-writing.

[The witness was directed to withdraw.]

Then Mr. *Thomas Wilson* was again called in, and examined as follows:

Mr. *Whitbread*.—Speak to the part of this paper which is in your own hand writing?

Mr. *Wilson*.—Upon examination of the figures, I see they are of my writing; the title of the account, and the other parts are not.

Mr. *Whitbread*.—Are the figures of the calculation, which is the material part, of your hand-writing?

Mr. *Wilson*.—I believe so.

Mr. *Whitbread*.—Were these figures made by you in return to the precept by the commissioners of naval inquiry?

Mr. *Wilson*.—I do not recollect this particular account being made out, in consequence of the precept from the commissioners of naval inquiry, but I believe that it is a return to the requisitions of the commissioners of naval inquiry.

Lord Chancellor.—Did you make those figures as a public officer of the board?

Mr. *Wilson*.—I did.

Lord Chancellor.—From public documents in the office?

Mr. *Wilson*.—Certainly I did.

Then Mr. *Thomas Wilson* was cross-examined as follows:

Mr. *Plumer*.—From what materials in the office did you make that paper.

Mr. *Wilson*.—From books of balances, which were kept by the paymaster.

Mr. *Plumer*.—Did you make the examination yourself of those books, and make the entry in your own hand-writing?

Mr. *Wilson*.—Most unquestionably; I could do it from no other source.

The paper was delivered in, and is as follows:

“Navy-pay-office, 3d July, 1804.

“Gentlemen;

“In answer to your requisition of the 12th ultimo, I have the honour to inclose herewith an account of the balance of public money in the hands of the treasurer of the Navy, on the 31st of December in each year, from 1785, to 1789, inclusive, showing the sums in the hands of the different cashiers or sub-accountants, and the amount of the sums standing in the name of the treasurer at the Bank at those periods, according to the form in which the account was rendered on the second of February, 1803.

I have the honour to be, gentlemen,

Your most obedient humble servant,

GEORGE CANNING.

The Commissioners of Naval Enquiry.”



An ACCOUNT of the Balances of the Public Money in the Hands of the Treasurer of the Navy, his different Cashiers or Sub-accountants, made up to the 31st of December in the following Years, with the Amount of Sums standing in the Treasurer's Name in the Bank at such Periods.

| 31st Day of December.                                                                                   | 1784.   |       | 1785.   |       | 1786.   |       | 1787.   |       | 1788.   |       | 1789.   |        |
|---------------------------------------------------------------------------------------------------------|---------|-------|---------|-------|---------|-------|---------|-------|---------|-------|---------|--------|
|                                                                                                         | £.      | s. d. | £.      | s. d. | £.      | s. d. | £.      | s. d. | £.      | s. d. | £.      | s. d.  |
| The Treasurer of the Navy .....                                                                         | 70,831  | 13 7  | 113,651 | 16 7  | 81,942  | 0 1   | 459,369 | 11 8  | 57,779  | 8 11½ | 106,281 | 15 10½ |
| Cashier of the Navy .....                                                                               | 30,081  | 1 6½  | 48,007  | 6 9½  | 1,527   | 12 6½ | 5,026   | 16 4½ | 1,954   | 14 9  | 6,894   | 5 7½   |
| Cashier of the Victualling .....                                                                        | 10,662  | 9 11½ | 27,914  | 8 6½  | 6,331   | 10 2½ | 7,943   | 8 5½  | 3,980   | 8 7½  | 5,839   | 5 8½   |
| Deputy Paymaster.....                                                                                   | 13,943  | 4 5½  | 20,619  | 3 0   | 19,585  | 3 8½  | 52,140  | 6 9½  | 58,251  | 13 8  | 65,891  | 2 6½   |
| Cashiers at Portsmouth .....                                                                            | 3,952   | 16 9½ | 1,201   | 16 9½ | 6,840   | 1 3½  | 52,052  | 7 5½  | 43,963  | 9 9½  | 42,589  | 14 10  |
| Cashiers at Plymouth.....                                                                               | 15,232  | 15 2½ | 27,712  | 12 6½ | 30,151  | 5 11½ | 36,121  | 14 9  | 30,724  | 5 5½  | 41,480  | 6 4    |
| Cashiers at Chatham .....                                                                               | 32,988  | 8 4½  | 32,900  | 18 1½ | 33,562  | 4 9   | 39,914  | 17 5  | 37,663  | 4 4½  | 38,585  | 17 6   |
| Cashiers at Sheerness.....                                                                              | —       | —     | —       | —     | —       | —     | —       | —     | —       | —     | —       | —      |
| Cashier of Allotments.....                                                                              | —       | —     | —       | —     | —       | —     | —       | —     | —       | —     | —       | —      |
| Exchequer Fees .....                                                                                    | 3,000   | 0 0   | 3,812   | 13 6  | 6,000   | 0 0   | 6,000   | 0 0   | 4,503   | 8 9   | 7,503   | 8 9    |
|                                                                                                         | 180,692 | 9 11  | 275,820 | 15 11 | 185,939 | 18 7½ | 658,569 | 2 10½ | 238,820 | 14 4  | 315,065 | 17 1½  |
| Balances of Account of the Treasurer of his Majesty's Navy in the Bank at the Periods above stated..... | 64,331  | 13 7  | 9,026   | 10 8  | 25,942  | 0 1   | 406,269 | 11 8  | 9,179   | 8 11  | 52,481  | 15 10  |



Mr. *Whitbread*.—There is an error in this account, from leaving out one of the accounts of lord Melville at the Bank, in the year 1785, as was stated by the Commons the other day. The accountant who made out this paper, did not take into consideration all the accounts lord Melville had at the Bank at that time; one was left out, and therefore the balance of 9,026*l.* 10*s.* 8*d.* ought to have been increased in favour of lord Melville to so much more as the account contained; that is to say, the account opened by Mr. Douglas immediately after the passing the act of parliament, from July 1785 to January 1786: whatever stood upon that account ought to be added to the balance at that time. Subject to that correction, the whole account is perfectly correct.

Lord Chancellor.—How do you establish that?

Mr. *Whitbread*.—By reference to the books of the Bank of England at that time.

Lord Chancellor.—Do you prove that?

Mr. *Whitbread*.—It is an admission in favour of lord Melville; but we can prove it, if your lordships please. We wish to have the whole of this paper printed.

Mr. *Plumer*.—Will the honourable manager state what is the sum which ought to be added to the account?

Mr. *Whitbread*.—I will give the learned counsel the sum by and by.

Then the right honourable *George Tierney* was called, and, being sworn, was examined as follows:

Mr. *Whitbread*.—Were you, at any time, treasurer of the Navy?

Mr. *Tierney*.—My lords, before I answer that question, I presume I may be permitted to clear myself, from what may otherwise appear to be a want of respect to your lordships; there was nothing more remote from my intention than to show any thing other than the most complete deference to the order and proceeding of this Court, neither have I any personal motive for presuming to protest, as to the place in which I am examined. I felt that the courtesy of every court in the kingdom would have allowed me to be examined in any place in which I might be sitting, when called as a witness, and being in that place as one of the Commons, not an indifferent spectator, but here, in a committee of the whole house, to make good the charges against lord Melville, I did feel that I should be wanting in that respect which was due to them, did I not endeavour to maintain my right and privilege of being examined in my place, in which, as a member of the House of Commons, I attended.\* Having protested against

the place in which I now stand, I will proceed to answer the questions of the honourable manager.

Mr. *Whitbread*.—Were you at any time treasurer of the Navy?

Mr. *Tierney*.—I was.

Mr. *Whitbread*.—When did you undertake that office?

Mr. *Tierney*.—Sometime towards the end of the month of May, 1803.

Mr. *Whitbread*.—Did you execute the duties of that office personally?

Mr. *Tierney*.—I did, during the time I had the honour to hold that office, all that I conceived it incumbent upon me to do in the discharge of the duties of it; that is, I gave to the office my general and pretty constant superintendence.

Mr. *Whitbread*.—Did you give a power of attorney to any person to execute the duties of the office as paymaster?

Mr. *Tierney*.—I did, in the first instance, to Mr. Alexander Trotter, whom I found in possession of that office, and who had held it for a number of years preceding the time of my appointment; and afterwards, at the distance of about a month or six weeks, I removed Mr. Trotter, for the purpose of appointing another gentleman, Mr. Latham.

Mr. *Whitbread*.—Did Mr. Latham execute the duties of the office of paymaster during the time you held the office.

Mr. *Tierney*.—He did, till I resigned the office in the month of May, 1804.

Mr. *Whitbread*.—Had he full authority to draw for all the public cash, as paymaster?

Mr. *Tierney*.—He acted under the same power which preceding paymasters had acted under; at least my direction was, that the power to him should be so drawn.

Mr. *Whitbread*.—In the absence of Mr. Latham, who would have been, according to the course of practice in the office, to execute his office?

Mr. *Tierney*.—It was one of the inconveniences which I found in the office, that if the paymaster were occasionally absent, there was no officer in that department who officially would have succeeded him; consequently, the burthen of the office would have fallen personally upon myself, as far as related to drawing upon the Bank of England.

Mr. *Whitbread*.—Had any other person authority from you to draw for public money, except Mr. Trotter in the first instance, and Mr. Latham, in the second?

Mr. *Tierney*.—No other person whatever.

Mr. *Whitbread*.—Was any alteration made during your treasurership, in the manner of conducting the business, with respect to drawing money from the Bank of England?

Mr. *Tierney*.—A very considerable alteration took place almost immediately upon the appointment of Mr. Latham, an alteration for which I was indebted to a suggestion of Mr. Trotter. Mr. Trotter stated to me that an inconvenience might arise, and even danger ac-

\* The privilege here asserted by Mr. Tierney appears to be consistent with the general parliamentary usage, although an instance to the contrary occurred on the trial of Warren Hastings. See Mr. Hatsell's note on this subject, 4 *Precedents*, 288, ed. of 1818.



crue, from the practice of sending messengers to the Bank of England to bring back money to the office.

*Lord Chancellor.*—What Mr. Trotter said is certainly no evidence whatever against lord Melville.

*Mr. Whitbread.*—The purpose for which the Commons wished to introduce it is this, because the word write-off, has been introduced in evidence, and we wish to explain that. Was any thing done, by way of communication from Mr. Trotter to you, as to altering the mode of placing money to the account of the sub-accountants, in the Bank of England?

*Mr. Tierney.*—The alteration which took place under my direction was this;—that heretofore it had been the custom for the sub-accountants to wait upon the paymaster in the morning, stating what sum they should probably want, in order to carry on the current transactions of the day; and upon this representation a draft was drawn upon the Bank, and messengers dispatched with it, who came back bringing home the money which was delivered to the sub-accountant. The alteration I made was this, that when a sub-accountant applied to the paymaster for a sum of money, no such proceeding took place as a draft being given by the paymaster upon the Bank of England; the mode to obviate that necessity, adopted by me, was this—that four different accounts were raised at the Bank, in the names of the four principal clerks who had the payment of the money; and these accounts being so raised in the Bank books, instead of their being put in cash by the paymaster's draft, the paymaster wrote to the Bank an order, stating—write off from my account to the account of the sub-accountant in question, the sum which he had stated to be necessary for carrying on the ordinary payments.

*Mr. Whitbread.*—Do you know whether in the course of the office, any payments are made by the treasurer or his paymaster?

*Mr. Tierney.*—Certainly not; there are some exceptions, but they are very rare.

Then the right honourable *George Tierney*, was cross-examined as follows:

*Mr. Plumer.*—I understand you to state that the alteration made, was a direction to write off a sum from one account to another account; is that the alteration?

*Mr. Tierney.*—Certainly.

*Mr. Plumer.*—You have stated the form of the order that was given upon that occasion; please to repeat what the form of the order was.

*Mr. Tierney.*—The form of the order to the Bank, to the best of my recollection, but I have not had possession of one of these drafts for two years, was, "Write off from my account to the account of Mr. Swaffield, Mr. Davis, Mr. Slade, or Mr. John Swaffield such a sum."—The Bank would then obey that instruction, and that sub-accountant would

find himself possessed of a sum at the Bank, for which he might draw as should appear to him to be convenient.

*Mr. Plumer.*—I presume that was the whole form of the draft, as near as you can recollect, which was given upon that occasion?

*Mr. Tierney.*—My recollection does not furnish me with any other answer.

*Mr. Plumer.*—Whether the drafts went on to specify any head of service, or only in general terms, to have it written off from one account to another?

*Mr. Tierney.*—To the best of my recollection it would be unnecessary so to do, because the account was opened at the Bank in the name of the sub-accountant, stating for what particular branch; therefore the direction to write off, explained what the nature of the payment was to be.

*Mr. Plumer.*—Did the sub-accountants keep any official or private accounts at the Bank?

*Mr. Tierney.*—I know of no other accounts than the accounts to which I have alluded.

*Mr. Plumer.*—Prior to the order in question was it usual for the sub-accountants to keep an official account at the Bank, or such an account as they might keep any where else?

*Mr. Tierney.*—I apprehend that, officially, the sub-accountants kept no account at the Bank; what they might do for their individual convenience is that of which I can have no cognizance.

*Mr. Plumer.*—Individually they might keep an account at the Bank, but that was not an official account?

*Mr. Tierney.*—I understand it so.

*Mr. Plumer.*—After the alteration took place, did it still continue to be the usage of the office to make small payments in cash, at Somerset House?

*Mr. Tierney.*—I apprehend that new regulation, which I have endeavoured to describe, created no alteration whatever in the practice of the office, but only affected the mode of bringing money from the Bank to the office.

*Mr. Plumer.*—Do you know that small payments to a considerable amount were made daily, at the office at Somerset House, in the proper departments?

*Mr. Tierney.*—I know it as well as I can know any thing which I did not actually see. I apprehend there is not the least doubt upon the subject, but not having seen the actual payments made I cannot undertake to swear to it.

*Mr. Plumer.*—I understood you to say, that you gave a power of attorney, first to Mr. Trotter and afterwards to Mr. Latham, to execute the duty of paymaster, and to act as your deputy?

*Mr. Tierney.*—I did.

*Mr. Plumer.*—After that, was the general detail of all receipts and payments left to that officer?

*Mr. Tierney.*—The general detail of receipts and payments was left to that officer. I frequently superintended the nature of the



accounts. I had, from time to time, references made to me upon any difficulties that might occur; and I might state more than that; that I held it my duty, whether difficulties occurred or not, as much as possible, to superintend the general state of the cash at the office.

Mr. Plumer.—Was the detail of the business of receipts and payments of each day, gone through by the paymaster?

Mr. Tierney.—Certainly, unless any payment was claimed, about which there might be some doubt: all the ordinary payments were made in the way the learned counsel supposes.

[The witness was directed to withdraw.]

Mr. Whitbread.—We next propose to call Mr. Latham, who was paymaster to Mr. Tierney.

Then William Ashby Latham, esquire, was called in, and, being sworn was examined as follows:

Mr. Whitbread.—Were you paymaster to Mr. Tierney whilst he was treasurer of the navy?

Mr. Latham.—I was.

Mr. Whitbread.—Did you act in all the official concerns of the treasurership of the navy, under a power of attorney, given you by Mr. Tierney?

Mr. Latham.—I did.

Mr. Whitbread.—Did you make any payment yourself personally, as paymaster of the navy, or issue all the money to the sub-accountants for that purpose?

Mr. Latham.—I never made any personal payments, I always issued money for that purpose to the sub-accountants.

Mr. Whitbread.—Was the cash balance, during your paymastership, in the Bank of England?

Mr. Latham.—Yes.

Mr. Whitbread.—Did you delegate the power given you by Mr. Tierney to any body else?

Mr. Latham.—Never.

Mr. Whitbread.—Did you practise the mode of carrying money yourself to the sub-accountants by write-off?

Mr. Latham.—I did.

Mr. Whitbread.—Did these write-offs bear upon the face of them the different branches of navy, victualling, and pay.

Mr. Latham.—Not that I recollect. The name of each individual accountant was stated upon the write-off.

Then William Ashby Latham, esquire, was cross-examined as follows:

Mr. Plumer.—How long did you continue in the office of paymaster?

Mr. Latham.—Ten months.

Mr. Plumer.—Did it happen to you to be sick or absent during that time?

Mr. Latham.—To have been absent once,

on account of sickness in my family, for about a week.

Mr. Plumer.—Who did the business for you during that week.

Mr. Latham.—What it was necessary to attend to, Mr. Tierney officiated for me in my absence—the drafts were sent to me at my house in Brook-street.

Mr. Plumer.—You had no other interruption from attending your duty, except that week's sickness?

Mr. Latham.—Never that I recollect.

Mr. Plumer.—After the sum was written off to the sub-accountant, had the sub-accountant the full control over all the money so written off at the Bank?

Mr. Latham.—He certainly had.

Mr. Whitbread.—My lords, the Commons wish to put a paper in evidence before your lordships, in confirmation of the evidence adduced yesterday, of a certain loan having been advanced by Mr. Sprot. Mr. Sprot stated that he made an advance of money to Mr. Trotter, upon the security of Mr. Robert Dundas, added to the security of certain portions of stock.

Mr. Plumer.—I admit the signature to this paper to be the hand-writing of lord Melville.

Then the said paper was read, and is as follows:

“London, 16th May, 1800.

Messrs. Thomas Coutts & Co.

There is now standing in my name at the Bank;

£.11,250 0 0 New Five per Cent Annuities.

8,433 14 11 Reduced Three per Cent Annuities.

3,566 5 1 Consolidated Three per Cent Annuities, and in my name in the books of the East-India Company, being part of a larger sum.

1,000 0 0 East-India Company's Stock.

“All of which Sums I hereby authorise and direct you to sell, or transfer, agreeably to any directions you may receive from Mark Sprot, esq. whose order for the transfer, or receipt for the produce, shall be to you a sufficient discharge.

“HENRY DUNDAS.”

[The witness was directed to withdraw.]

Mr. Whitbread.—By that paper it would appear that the loyalty and the reduced, were lord Melville's; and that orders were thereby given to Mr. Coutts to transfer or convey to Mr. Mark Sprot those sums. I wish now to call your lordships attention to the sum of 13,500*l.* East-India stock, to show that the assertion made by Mr. Trotter, that this stock was always kept under his own control is correct, by the evidence in Mr. Montague Lind's



hand-writing, being a direction as to that stock.

Then Mr. *Francis Lind* was again called in, and -examined as follows :

Mr. *Whitbread*.—Is the name at the bottom of that paper your brother's hand-writing, Mr. *Montague Lind*'s?

Mr. *Lind*.—It is, to the best of my belief.

Mr. *Whitbread*.—This is an original receipt and transfer from the East-India Company of 13,500*l.* of their principal stock. Is that also your brother *Montague Lind*'s hand-writing?

Mr. *Lind*.—It is.

Mr. *Whitbread*.—And the direction to *Coutts and company* upon the back of that receipt, how to appropriate that stock?

Mr. *Plumer*.—This paper certainly cannot be any evidence if we object to it, unless it were brought home to the defendant; but I do not wish to object to it.

Lord *Chancellor*.—It is a declaration of Mr. *Lind*; but it is accompanied with the transactions to which it relates.

Mr. *Plumer*.—I do not object to it.

Then the paper was read, and is as follows :

“ East-India Stock, £.13,500.

“ London, the 1st Day of Dec. 1795.

“ Received of *Thomas Coutts, Edmund Antrobus, and Coutts Trotter, esqrs.* the sum of five shillings, being in full for thirteen thousand five hundred pounds in the principal stock, and proportionable part of the fund due to the United Company of Merchants of England, trading to the East Indies, this day transferred in the said Company's books unto the said *Thomas Coutts, Edmund Antrobus, and Coutts Trotter, esqrs.*..... £ 0 5 0

“ MONTAGUE LIND.”

“ Witness, *J. ROGERS.*”

Mr. *Plumer*.—On the back of it there is a direction from Mr. *Lind* how that stock was to be disposed of.

Then the indorsement was read, and is as follows :

“ London, 1st Dec. 1795.

“ Messrs. *Thomas Coutts and Co.*

“ I have this day transferred into your names the sum of thirteen thousand five hundred pounds East India Stock, mentioned on the other side, and I desire you will hold the same, with all dividends to grow due thereon, at the disposal of *Alexander Trotter, esq.* of the Navy-pay-office, on whose account, and by whose desire it has hitherto stood in my name; I having myself no interest in the said stock.

“ MONTAGUE LIND, Examinant.”

Mr. *Lind*.—The upper part of this paper is not written by my brother; the signature only is his.

[The witness was directed to withdraw.]

Mr. *Whitbread*.—This confirms Mr. *Trotter*'s evidence as to the 13,500*l.* India stock being kept at his disposal in the name of Mr. *Lind*. I mean now to show that Mr. *Sprot* actually received the control over this stock, which was given him by lord *Melville*.

Then *Mark Sprot*, esquire, was again called in, and examined as follows :

Mr. *Whitbread*.—You were asked yesterday to give the Court information as to the value of a draft which you received from Mr. *Alexander Trotter*, to the amount of 1,427*l.* You said, you had left your banking-book behind; now look at that book which is put into your hand: can you ascertain, from that book, that you received that sum?

Mr. *Sprot*.—Yes, 1,427*l.* and there were odd shillings and pence which I put in my pocket. I received it in Bank notes. I have been, since I was examined by the committee, to my bankers, and traced the notes; the bankers were so good as to look over the notes, and I found the Bank notes numbers, with which I furnished the committee; so that I received this money from Mr. *Trotter*, I presume, but I cannot say.

Mr. *Whitbread*.—Look at that paper. [Letter, dated 16th May, 1800, from lord *Melville* to *Messieurs Coutts and Company.*] Is the signature at the bottom of it your writing?

Mr. *Sprot*.—It is my hand-writing.

It was read, and is as follows :

“ London, 11th May, 1800.

“ *Messieurs Thomas Coutts and Co.* I write this to acknowledge your having transferred the sums of stocks mentioned on the other side, agreeably to directions given you by me, and I have received the produce of the sales, which I have paid into your hands, amounting to 20,452*l.* 4*s.* 5*d.*”

Mr. *Whitbread*.—Now refer to the other side of that paper, and state whether the stock there mentioned, and directed to be transferred to you by lord *Melville*, constituted a part of the security, upon which you made the advance of 51,500*l.* to the joint security of Mr. *Robert Dundas*.

Mr. *Sprot*.—I presume that it was, but I have no recollection of it; I have no shadow of recollection of it. I have read this paper, and I declare that I have no more recollection of it than the child unborn.

Mr. *Whitbread*.—Do you know that the stock for which you signed your name, as having received, and for which you paid the consideration of 20,000*l.* was the stock which formed part of the security, together with that of Mr. *Robert Dundas*, for the loan you advanced?



Mr. *Sprot*.—I see from this paper, that certainly this stock must have been sold by me, and consols bought, which with the 14,500*l.* India made the amount of the sum which I lent Mr. Robert Dundas, but I have no recollection of that paper at all.

Mr. *Whitbread*.—We beg that paper may be put in as evidence.

Then *Mark Sprot*, esquire, was cross-examined as follows :

Mr. *Plumer*.—If you now have any memory of the transaction, I would ask whether the stock was then sold out or not ?

Mr. *Sprot*.—Certainly the stock was sold out, and I presume by myself, for I remember perfectly well that I would not lend the honorable Robert Saunders Dundas upon loyalty, because it was a heavy stock, and that I would lend it upon consols, but not upon that.

A *Lord*.—Had you any interview with lord Melville in Scotland ?

Mr. *Sprot*.—Not a shadow ; I have not seen his lordship these four or five years till I saw him in this court ; not the least interview, nor with his son, the honourable Robert Saunders Dundas. I have neither seen the one nor the other, nor had any communion or communication, directly or indirectly.

Mr. *Whitbread*.—My lords, we wish now to put another paper in evidence, a letter written by lord Melville, also ; which is a direction to Mr. Coutts to pay the balance of his first treasurership, dated July, 1805. This comes in corroboration of the evidence we have formerly adduced, that that balance was paid in July, 1805.

Mr. *Plumer*.—I admit it to be lord Melville's signature.

The letter was read, and is as follows :

" Grosvenor-square, 27th July, 1805.

" Gentlemen ;

" I request that you will pay, on my account, into his majesty's exchequer, the sum of 5,111*l.* 2*s.* 9½*d.* being the balance due by me as treasurer of the navy, for my first treasurership, ending the 10th April, 1783.

" I am, gentlemen,

" Your most obedient and humble servant,

" MELVILLE.

" The right honourable lord viscount Melville, for his first treasurership of the navy, ending the 10th April, 1783.

" Imprest money. repaid, 5,111*l.* 2*s.* 9½*d.*

" Paid into lord Camden's office, 27th July, 1805.

" Thomas Coutts, esq. and Co."

Mr. *Whitbread*.—My lords, I understand that Mr. Bathurst, who has just been examined before your lordships, wishes he may be permitted to explain a part of his evidence.

The right honourable *Charles Bragge Bathurst* was again called in.

Mr. *Bathurst*.—Conceiving that my conduct has become, in some measure, a matter of your lordships' consideration ; I wish to take the liberty of rectifying what appears to me to be a mistake, with respect to the balance of the sub-accountants. I certainly understood, that upon the regulation which I directed, of removing the paymaster's balances, from the private bankers to the Bank of England, that the private balances likewise of the sub-accountants were to be removed at that time, and I am confident that accounts were raised at the Bank of England, in the names of the sub-accountants, at the same time that the alteration took place with respect to the paymaster's accounts.—Whether those accounts are to be considered as official or not, is not within my knowledge ; but it was a part of the arrangement, that the accounts of the sub-accountants, as well as of the paymaster, should be removed to the Bank of England, and it was so done.

[The witness was directed to withdraw.]

Then *Bernard Cobbe*, esquire, was called in again, and examined as follows :

Mr. *Whitbread*.—Whether if lord Melville, had offered any payment on the account of his ex-treasurership balances—

Mr. *Plumer*.—Your lordships may remember that this subject has been inquired into, and I believe by this same witness.

Mr. *Whitbread*.—If it is proved in evidence already before your lordships, the Commons do not wish to trouble your lordships with it.

[The witness was directed to withdraw.]

Mr. *Giles*.—My lords, the Commons wish to make a small and short addition to the evidence they gave your lordships, respecting the tenth charge.—Your lordships will recollect that a draft for 2,000*l.* was proved to be drawn by Mr. Douglas, on the 25th May, 1785, in favour of George Swaffield.

Mr. Swaffield was called to prove he had never received that draft, or the produce of it. It was also in evidence before your lordships, that on that very day, the 25th May, 1785, 2,000*l.* was paid into the account of lord Melville, at his bankers, Messieurs Drummonds ; what I now propose to offer is, as there was some doubt whether Mr. Swaffield had not filled up, or drawn himself drafts upon the Bank, in the time of Mr. Douglas ; I propose now to produce to your lordships a draft which was drawn on the 25th May, 1785, by Mr. Douglas, in favour of Mr. Swaffield ; I shall first call Mr. Swaffield, who will prove it is signed by Mr. Douglas, and filled up in the hand-writing of Mr. Douglas.

Then *George Swaffield*, esq., was again called in, and examined as follows :

Mr. *Giles*.—Is that draft in your hand,



signed and filled up by Mr. Douglas, who was the paymaster to lord Melville?

Mr. Swaffield.—It is.

Mr. Giles.—Is it signed and filled up by him?

Mr. Swaffield.—The whole of it is in Mr. Douglas's own hand writing.

The same was read, and is as follows:

" 25th May, 1785.

" No. 6,021. I. New Account.

" Pay George Swaffield, esq. or bearer, two thousand pounds on account of the right honourable Henry Dundas.

ANDREW DOUGLAS."

£.2,000.

D. B.

" To the Cashiers of the Bank. A. S."

[The witness was directed to withdraw.]

Mr. Giles.—I will now call the Bank clerk, who will prove the payment of that draft.

Then Mr. Alexander Simpson was called in, and, being sworn, was examined as follows:

Mr. Giles.—Are you a clerk in the Bank, and were you so in the year 1785?

Mr. Simpson.—Yes.

Mr. Giles.—Did you pay that draft I now put into your hand?

Mr. Simpson.—I did.

Mr. Giles.—Can you state from any mark in your hand writing upon that draft, whether it was paid in Bank notes or not?

Mr. Simpson.—Yes, that it was paid in Bank notes.

Mr. Giles.—Can you state what notes they were, that constituted this payment?

Mr. Simpson.—I cannot.

Mr. Giles.—Have you any books, to which you could refer, in the Bank, to establish that fact?

Mr. Simpson.—I cannot say whether the books are destroyed or in being.

Mr. Giles.—What are the kind of books that would exhibit that?

Mr. Simpson.—There are, or were, books that could tell exactly the kind of notes they would be.

[The witness was directed to withdraw.]

Mr. Giles.—I have shown that this draft was paid in Bank notes. I mean to show that the 2,000*l.* that was paid in on the same day to the account of lord Melville, at Messieurs Drummond's, was paid in two Bank notes of 1,000*l.* each—the reason why I cannot trace that these were the identical notes is, that the Bank book in which it would appear whether they were the original notes or not, is destroyed.

Then Mr. Thomas Rippon was again called in, and examined as follows:

Mr. Giles.—Are there any books in the Bank, or were there any, from whence it ought

to appear in the regular course of business, what particular notes were paid for that draft?

Mr. Rippon.—There are no particular books at this time.

Mr. Giles.—Were there any books in 1785, which, according to the ordinary course of business, would show, by what notes, drafts, at that time carried into the Bank, were paid?

Mr. Rippon.—There were.

Mr. Giles.—Are those books now in existence?

Mr. Rippon.—No, they are not, they are destroyed.

Mr. Giles.—Do you know how those books came to be destroyed?

Mr. Rippon.—They were destroyed in consequence of want of room in the Bank library.

[The witness was directed to withdraw.]

Then Charles Drummond, esq., was called in, and being sworn, was examined as follows:

Mr. Giles.—Can you by reference to any book, in your own hand-writing, state in what the 2,000*l.* that was paid into the account of lord Melville, on the 25th of May, 1785, was paid?

Mr. Drummond.—To Andrew Douglas, esquire, two one thousand pound notes.

Lord Chancellor.—What book is that?

Mr. Drummond.—A waste-book in my own hand-writing.

[The witness reads.]

" Andrew Douglas, esquire, 1,000*l.* note, No. 350—£.1,000, No. £.2,000 Credit.

" Right honourable Henry Dundas."

Mr. Giles.—Does that import that the two one thousand pound notes were paid in by Andrew Douglas, to the credit of Mr. Henry Dundas?

Mr. Drummond.—It does.

[The witness was directed to withdraw.]

Mr. Giles.—My lords, we have no other evidence upon this head.

Mr. Whitbread.—We wish to call one or two witnesses only upon the subject of the release that has been given in evidence.

Then Mr. James Gibson, was called in, and being sworn, was examined as follows:

Mr. Whitbread.—Are you a writer to the signet, in Scotland?

Mr. Gibson.—I am.

Mr. Whitbread.—Do you transact business generally as a writer to the signet, in Scotland?

Mr. Gibson.—To a considerable extent.

Mr. Whitbread.—Are you conversant in drawing releases between parties?

Mr. Gibson.—I have seen a great deal of that business.

Mr. Whitbread.—Read to yourself a clause



in that release, which begins "and they have either mutually delivered up to each other."—Is that a usual and ordinary clause in releases?

Mr. Gibson.—I never saw any clause of the kind.

[The witness was directed to withdraw.]

Mr. Whitbread.—There is a point which has come within this last half hour to the knowledge of the Commons, which they beg your lordships' permission to retire for a few minutes, to take into their consideration.

[The Managers retired, and after a few minutes, returned again into court.]

Mr. Whitbread.—My lords, we now propose to put in an attested copy of the Commons' Journals.

Then Mr. Thomas Beverley Westwood was called in, and, being sworn, was examined as follows:

Mr. Morris.—Have you examined the printed Journals of the House of Commons, which you hold in your hand, with the original Journals of that House?

Mr. Westwood.—I have.

Mr. Morris.—Have you also examined the entry of the presentation of the Eighth Report?

Mr. Westwood.—I have.

Mr. Morris.—And the entry of the order for bringing in the act of parliament?

Mr. Westwood.—I have.

Mr. Morris.—And the entry of the order for Mr. Dundas's carrying it up to the House of Lords.

Mr. Westwood.—I have.

Mr. Morris.—And the resolution of the House of Commons of the 19th of June, 1782?

Mr. Westwood.—Yes, I have.

Mr. Morris.—Are they true copies of the original Journals?

Mr. Westwood.—They are.

Mr. Whitbread.—My lords, the Commons here close their evidence upon the impeachment of lord viscount Melville; with a reservation that should any papers come into their hands, which may bring any new facts within their knowledge, between this and to-morrow morning, they may have the liberty to produce those facts and papers. Those papers which I just now mentioned to your lordships they have not yet had an opportunity of examining. Excepting upon these points, the Commons here close their evidence before your lordships, and it will take a very short time should they produce any farther evidence.

Adjourned to the Chamber of Parliament.

TENTH DAY.

Saturday, May 10, 1806.

The lords and others came from the cham-

ber of parliament into Westminster-hall, in the same order as on the first day of the trial.

Lord Chancellor.—Gentlemen managers for the Commons, you may now proceed with your evidence, and the lords will be pleased to give their attention.

Mr. Whitbread.—My lords, the Commons are fully persuaded that your lordships will not think it extraordinary, that they do avail themselves of the claim they made yesterday, to produce some farther evidence before your lordships, which, however, I hope, will occupy but a short space of time; but it will be necessary, for the completion of their case, that they should call, in the first place, Mr. George Fennell, who has been before your lordships heretofore.

Then George Fennell, esq., was again called in, and examined as follows:

Mr. Whitbread.—Examine the books which have been before in evidence before their lordships, and state what was the treasurer's balance in the Navy branch, on the 30th of June, 1784.

Mr. Fennell.—1,201*l.* 7*s.* 11*d.*

Mr. Whitbread.—Refer to the Pay-branch for the same purpose.

Mr. Fennell.—1056*l.*

Mr. Whitbread.—The same question is asked you as to the Victualling-branch.

Mr. Fennell.—851*l.* 4*s.* 4*d.*

Mr. Whitbread.—Cast up those sums and see what the aggregate amount is.

Mr. Fennell.—They amount to 3,108*l.* 12*s.* 3*d.*

Mr. Whitbread.—I wish to put into the hands of the witness a paper, which is in his hand-writing, and which is a computation of balances similar to those that have been put in before. Is that paper in your own hand-writing?

Mr. Fennell.—It is.

Mr. Whitbread.—What does it import to be?

Mr. Fennell.—An account of the balances in the hands of the right honourable Henry Dundas, now lord viscount Melville, on account of his first treasurership of the navy, commencing the 19th of August, 1782, at the end of the months following, as far as they are stated or appear in a certificated book of the Navy-pay-office.

Mr. Whitbread.—Are the calculations made in that paper made by yourself?

Mr. Fennell.—They are not calculations, but merely additions of two branches together.

Mr. Whitbread.—Are they made by yourself?

Mr. Fennell.—They are; I made them from each book.

Lord Chancellor.—You will put upon your paper the particular places from which you made them.

Mr. Fennell.—There is each particular result.

Lord Chancellor.—Do those results agree?



Mr. Fennell.—They do.

Lord Chancellor.—It would be very convenient, if, in forming those results, a note were made by which the person making them could refer to the entry from which they are taken.

Mr. Whitbread.—The date ascertains the particular page in each book, from whence he has taken the extract. The result is of his own making, and the whole is in his own hand-writing; and the Commons mean to put that paper in as other similar papers have been put in, merely as the result of the computation of the witness.

Then George Fennell, esq., was cross-examined as follows:

Mr. Plumer.—Does this computation of balances which commences in August, 1782, go on month by month, and to what time?

Mr. Fennell.—It proceeds month by month, until the expiration of the treasurership: then, being an ex-treasurership, it is made up quarterly at first, and afterwards only twice a year.

Mr. Plumer.—Do you mean down to the 10th of April, 1783?

Mr. Fennell.—Yes.

Mr. Plumer.—Does it proceed only quarterly from that time?

Mr. Fennell.—The accounts proceed monthly to the end of the year 1783.

Mr. Plumer.—What period of the account is it, when it becomes quarterly only?

Mr. Fennell.—The next year, 1784.

Mr. Plumer.—Down to what time does it continue quarterly?

Mr. Fennell.—To the year 1791.

Mr. Plumer.—I wish it should be just understood, whether this is a balance entirely confined to an account which belongs to the ex-treasurership?

Mr. Fennell.—Entirely to the first treasurership old account.

Mr. Whitbread.—Your lordships will observe that this ceases to be a treasurership account on the 30th of April 1783, lord Melville having quitted the office of treasurer on the 10th of April. The accounts are made up in his name till the 30th of that month. From that time it becomes an ex-treasurership account, and that ex-treasurership account is made out to its conclusion, as stated by the witness. Is it not so?

Mr. Fennell.—Yes.

Lord Chancellor.—State the last date.

Mr. Fennell.—The last date is the 30th of September 1795. There was no alteration in the balances till 1800.

Mr. Whitbread.—The Commons offer this paper merely as the result of the calculation of the witness. State over again what was the aggregate balance you find from these three sums put together, on the 30th of June 1784.

Mr. Fennell.—It was 3,108*l.* 12*s.* 3*d.*

Mr. Whitbread.—I wish your lordships'

clerk should be directed to read the entry in this banking book, what the balance was in the Bank at that time.

Then the following entry in the banking book, before delivered in, containing the old account, was read.

“1804, 30th June, by balance to new account 8*l.* 12*s.* 3*d.*”

Mr. Whitbread.—We have now shown your lordships that the charge upon the treasurer was 3,108*l.* 12*s.* 3*d.* and that the actual sum in the Bank was 8*l.* 12*s.* 3*d.* leaving a deficiency at that time of 3,100*l.*

Then the following entry was read from the banking book, before delivered in, containing the new account.

“1804, 30th June, to balance from old account, 8*l.* 12*s.* 3*d.*”

[The witness was directed to withdraw.]

Mr. Whitbread.—We have now shown your lordships, that on the 30th of June 1784, there was a balance deficient of 3,100*l.* The Commons have shown your lordships, that lord Melville paid in the balance of his ex-treasurership account ending April 1783, in the month of July 1805, consisting of the sum of 5,111*l.* We have shown that by Mr. Coutts's book. We have shown the directions signed by lord Melville to Mr. Coutts to make that payment. The Commons now wish to show your lordships the circumstances under which the payment was made—they propose to show your lordships that when lord Melville's ex-treasurership account of the year 1783, came before the auditors of public accounts, there was a charge made, according to the power vested in them by the act, of 4,000*l.* and upwards for interest upon the sum due by lord Melville to the public; that notice was given to lord Melville of that charge, and of the intention of the auditors, unless the whole sum, making together upwards of 9,000*l.* principal and interest, were paid in within a certain period, to charge him from that period with the whole sum, and the interest of five per cent thereupon.

The Commons also intend to show your lordships that in consequence of this representation, lord Melville addressed a letter to the Treasury, dated 5th of July, 1805, stating the circumstances which induced him to apply for relief from that charge of interest.—The Commons intend to show your lordships also, that that relief was granted by direction of the board of Treasury; and they intend to show your lordships, that previous to the date of the letter of July, 1805, the vote of the House of Commons to impeach lord Melville, was upon your lordships' table. For the purpose of ascertaining these facts, we propose to call Mr. Bernard Cobbe, of the Auditor's office.

Mr. Plumer.—With great deference to your lordships, the matter now proposed to be gone



into is perfectly foreign to the present charge; is perfectly new matter, which was never opened by the honourable manager, at the time he stated to your lordships what were the matters in charge; is not contained in the articles; and proceeds to subjects foreign to them; and if I understand it, it goes to call into question the propriety or impropriety of certain acts of the late board of Treasury; their conduct in 1805, relative to those accounts, whether they acted properly or improperly with respect to them, is (with deference to your lordships) not relevant to the present charge.

Mr. *Whitbread*.—The Commons contend that they have a right to produce the evidence they propose to your lordships. The Commons have charged, that lord Melville from the balance of the treasurership remaining in his hand, did derive profit and advantage. They have shown, as they contend, that he did derive such profit and advantage, and the circumstances having come to their knowledge they propose to show your lordships (without meaning to arraign at all the conduct of the board of Treasury upon the subject) what the circumstances were under which lord Melville paid in that balance, which they have already shown he did pay in, in the year 1805; and they conceive that they have a right to this evidence, as to every other article of evidence they have already produced before your lordships.

Mr. *Plumer*.—My lord, as far as the evidence tends to show any interest or advantage derived by the noble defendant, from balances in his hands, I did not object to it; I did not state that to be the matter of my objection. But the honorable manager stated a great deal more matter, which is not really comprehended under that head. Perhaps the more regular way will be for me to wait till questions are put which raise the objection; and then I shall, if it shall be material, with your lordships' permission, again address you upon the subject.

Mr. *Whitbread*.—The Commons mean, by this evidence, to show to your lordships, that lord Melville, in his application to be relieved from the charge made upon him by the auditors, stated that the whole of this sum, from the year 1783 up to the period of 1800, was either in the Bank or in the hand of his sub-accountants. The Commons have shown your lordships that a balance of 1,600*l.* was deficient in 1786, which, together with 9,000*l.* added to it from another balance, lord Melville has acknowledged he was accountable for: they have shown to-day there was a balance of 3,100*l.* on the 30th of June, in his hands; and if the calculations delivered in by the witness prove true, of which the Commons entertain no doubt, it will be shown that other large balances were due from lord Melville to the public, on that ex-treasurership account, which lord Melville asserts were in the hands of the Bank, or of the sub-accountants.

Then *Bernard Cobbe*, esq., was again called in, and examined as follows:

Mr. *Whitbread*.—What is that paper you have before you?

Mr. *Cobbe*.—A duplicate of the declared account of the right honourable Henry Dundas, now viscount Melville, treasurer of his majesty's Navy, from the first of January to the 10th of April, 1783.

Mr. *Whitbread*.—What is the charge made in that declared account on lord Melville, for the payment of which his discharge was to be granted?

Mr. *Cobbe*.—The debt upon the account, as delivered in, was 5,111*l.* 2*s.* 9½*d.*

Mr. *Whitbread*.—Is that the whole charge made by the auditors upon lord Melville, upon that account?

Mr. *Cobbe*.—No.

Mr. *Whitbread*.—What was the additional charge?

Mr. *Cobbe*.—The additional charge was interest upon that. If your lordships give me leave, I will read the article—"For interest charged on this accountant."

Then an extract from the declaration of the final account of the right honourable Henry Dundas (now viscount Melville) treasurer of his majesty's Navy, from the 1st of January to the 10th of April 1783, was read, and is as follows:

"And so the said accountant £. s. d.  
upon the end and determination  
of this his final account of his  
first treasurership as treasurer of  
his majesty's Navy and victual-  
ling thereof, from the 1st Janu-  
ary 1783, to 10th April follow-  
ing, is indebted the sum of.... 5,111 2 9½

"To which is to be added,

"For interest charged on this  
accountant pursuant to an act of  
parliament passed anno 39th  
and 40th of his present majesty,  
intituled, 'An act for more ef-  
fectually charging public ac-  
'countants with the payment of  
'interest, for allowing interest to  
'them in certain cases, and for  
'compelling the payment of ba-  
'lances due from them.'

"On the sum of 5,111*l.* 2*s.*  
9½*d.* being the accountant's ba-  
lance on the audit of this ac-  
count, computed from the first  
of May 1783, the time when his  
successor commenced his pay-  
ments as treasurer of the Navy,  
to the day of the said audit;  
namely, the 28th June, 1805,  
the said interest is computed on  
the foregoing sum, at the rate  
of 4*l.* per cent per annum; the  
same being deemed a reason-



able rate for the period before mentioned, pursuant to the direction contained in the 4th section of the said act. The grounds on which the said interest is charged, are, that the said sum has been in the accountant's hands ever since he quitted the office of treasurer of the Navy, and a much larger sum during the greater part of the period between that time and the audit of the account: the said interest amounts to the sum of.... 4,530 5 5½

"Total balance including interest indebted..... 9,641 8 2½

"Examined,

"BERNARD COBBE, Inspector gen.

"Audited,

J. T. BATT.

JOHN MARTIN LEAKE.

C. W. ROUSE BOUGHTON.

"From which is to be deducted

"The above sum of 4,530*l.* 5*s.* 5½*d.* being the interest charged in pursuance of the act above recited, the lords commissioners of his majesty's Treasury having, by virtue of the power in them vested by the fourth section of the said act, signified to this board by letter from William Huskisson, esq. one of their lordships' joint secretaries, dated 20th August 1805, their opinion, that under all the circumstances of the case, the accountant ought not to be charged with interest on the balance in question..... 4,530 5 5½

"Balance indebted..... 5,111 2 9½

"Which said sum of 5,111*l.* 2*s.* 9½*d.* having been paid into the receipt of his majesty's Exchequer, as appears by a tally there levied, dated 27th Die Julij Anno Regni Regis Georgij Tertij 45°, and the deputy chamberlain's certificate of the joining thereof, the accountant is thereby even and quit.

Oct. 3 1805, the above mentioned tally amounting to five thousand, one hundred and eleven pounds, two shillings, and ninepence farthing, is received and joined.

R. LEETE,  
Dep. Chamb.

"Examined,

"BERNARD COBBE.

JOHN MARTIN LEAKE.

C. W. ROUSE BOUGHTON.

B. BOUVERIE.

No. 7, declaratur 28°. Die Octobris 1805.

W. PITT.

FITZ HARRIS.

BLANDFORD.

AR. MACDONALD.

Mr. Plumer.—I must now submit to your lordships, whether that entry, the reading of

which it was impossible for me to stop,—that long narrative out of this book, which has just been read,—whether it is consistent with fair proceeding that it ought to stand upon your lordships minutes. And, if it is not, I am quite certain that it will not be permitted to stand for the purpose of creating any prejudice, or drawing your lordships' attention to any matter that is not now properly before you. I understood the honourable manager to say, that he was only about to state in point of fact, what interest the noble defendant had made of this money. The entry that he has just read, contains a narrative of an attempt, an illegal attempt, on the part of that board, contrary to the act of parliament, to charge the defendant with interest. It was the subject of inquiry, whether they were proceeding consistently with that act, or under all the circumstances, in a way not warranted by it. Are we to go into that subject; are we to examine into all those circumstances, which it was competent and proper for the regular board to examine, in order to determine whether upon the whole case, it was proper that the defendant should be charged with interest or not?—Is that a subject now in charge?—Is the propriety of the conduct of the board of Treasury now before your lordships?—Yet, my lords, all this can be read for no other purpose than in part to draw this question before your lordships, which if it is proper to be gone into at all, must be thoroughly gone into; and all the merits of the case, the propriety of lord Melville's being subjected or not to the charge of interest, and what were the inducements and reasons which operated with that board, controlling and negating the act of the subordinate board, and under what circumstances it was finally led to the result that has been stated, must be brought in detail before the House. But I am persuaded your lordships will see, that this is leading us to an entirely new inquiry, which is now tacked on to the tail of all these proceedings, and of which, prior to the present moment, we have never had any intimation whatever.

Lord Chancellor.—It will relieve you from a great deal of difficulty if I say, once for all, that, in common sense, it can only prove this fact, viz. that there was a debt—a balance, of 5,111*l.* 2*s.* 9½*d.* against the noble defendant; that there was an additional charge made upon him of interest, making the total balance 9,641*l.* 8*s.* 2½*d.* and that the interest so charged was remitted, no matter whether right or wrong, involving no possible consideration before this House which can involve the lords of the Treasury, lord Melville, or any body else. It only proves, first, that in point of fact, that interest was remitted; and then another fact, viz. that the interest being remitted, lord Melville paid in the balance; and surely you can never dispute that it is evidence to that fact.

Mr. Plumer.—I am perfectly satisfied, if it is so understood.



*Lord Chancellor.*—It must be so understood by every man.

*Mr. Whitbread.*—The matter between the Commons and the noble defendant is, the Commons assert that he has made advantage of the public money; the act of parliament is not in question. I now put in a letter, in lord Melville's own hand-writing, stating the grounds upon which he applied for a discharge of this interest; and one word, as to what the learned counsel stated; these facts came to the knowledge of the managers only, while we were adducing our last evidence yesterday. Were not the Commons to proceed upon that evidence which was produced? and would not the Commons, if fresh evidence in support of their articles were to come into this box, at this moment, claim from your lordships a right to take that into consideration without consulting the learned counsel?

*Mr. Plumer.*—My lords, I hope I am not calling in question the right of the honourable managers, to produce supplementary evidence prior to the close of their evidence, in support of those articles which they have exhibited. All I contend is, that we are not to be drawn into a matter of foreign inquiry that does not belong to the matters in charge. So long as it does belong to those matters, I make no objection to evidence, whenever it may come before they have closed their case.

*Mr. Whitbread.*—My lords, we are inquiring into the matter in issue between lord Melville and the Commons. I beg the clerk may be directed to read this letter of his lordship's to the lords commissioners of the Treasury, and the endorsements thereupon.

*Lord Chancellor.*—The endorsements can never be evidence.

*Mr. Plumer.*—I admit lord Melville's signature.

Then the letter was read, and is as follows:

“London, 15th July 1805.

“Sir;

“I have the honour to communicate to you, for the information of the lords commissioners of his majesty's Treasury, the inclosed copy of a letter which I have received from the secretary to the commissioners for auditing the public accounts; and I trust that their lordships will acquiesce in the propriety of my request, that they will exercise the power conferred on them by the act 39 and 40 Geo. 3, cap. 54. and declare, that on payment of the balance of 5,111*l.* 2*s.* 9½*d.* within any short period which their lordships may assign, I shall be freed from the charge of 4,530*l.* 5*s.* 5½*d.* for interest.

“The grounds on which I found my request are, that for seventeen years after the termination of the account in 1783, viz. till the close of my second treasurer-ship in 1800, the money was either in the Bank of England, or in the hands of my sub-accountants; and since that period

has been in my own hands, liable at any hour to be claimed by the holders of assignments which had been or might be made upon me for payment by the different boards, to the full amount of the balance due by me.

“I have further to acquaint you, that I understand the delivery of the account to the auditors has been delayed till within these few months, only by the great pressure of business in the office of the treasurer of the Navy.

“I have the honour to be,  
Sir,

Your most obedient humble servant,  
MELVILLE.”

“W. Huskisson, esq. &c. &c. &c.”

*Mr. Whitbread.*—This is a copy of the letter sent to lord Melville by Mr. Cobbe, which the noble lord sent to the lords commissioners of the Treasury inclosed in his own letter, and which I request may be read.

Then the letter was read, and is as follows:

“Office for auditing the public accounts,  
Somerset place, 3d July 1805.

“My lord;

“The commissioners for auditing the public accounts having, on the 28th ultimo, audited the final account of your first treasurer-ship, as treasurer of the Navy, from 1st January 1783 to 10th April following with a balance due from your lordship to the public of the sum of five thousand one hundred and eleven pounds two shillings and nine pence farthing:

“I am directed to inform your lordship of the same, and to acquaint you, that by virtue of, and in conformity to the directions contained in the 4th section of an act of parliament passed in the 39th and 40th of the reign of his present majesty, intituled, ‘An act for more effectually charging public accountants with the payment of interest; for allowing interest to them in certain cases; and for compelling the payment of balances due from them;’ the said commissioners have charged your lordship with interest, at the rate of 4 per cent per annum, on the sum of 5,111*l.* 2*s.* 9½*d.* being the amount of the said balance, the said interest being calculated from the 1st day of May 1783 (the time when your lordship's successor commenced his payments), to the day of the audit of this account. The said interest amounts to 4,540*l.* 5*s.* 5½*d.*; and, together with the before-mentioned balance of 5,111*l.* 2*s.* 9½*d.* will form a total balance of 9,641*l.* 8*s.* 2½*d.* payable by your lordship to the public. The grounds on which the commissioners have charged your lordship with interest on the above balance of 5,111*l.* 2*s.* 9½*d.* are, that the said sum has



been in your hands ever since you quitted your office in 1783, and a much larger sum during the greater part of the period between that time and the audit of your account. It seems proper, also, to acquaint your lordship, that unless the whole sum of 9,641*l.* 8*s.* 2½*d.* be paid into the Exchequer previous to the declaration of your account, you will be chargeable with interest thereon, at the rate of 5 per cent, computed from the day on which your account was audited, until the same shall be paid.

"I have the honour to be, &c:

(Signed) BERNARD COBBE.

"Viscount Melville."

Then *Bernard Cobbe*, esq. was cross-examined as follows :

*Mr. Plumer*.—I observe, in the entry read by you from that book, a reference to an act of parliament; state the date of that act of parliament which is referred to.

*Mr. Cobbe*.—It was passed in the 39th and 40th year of his present majesty.

*Mr. Plumer*.—You stated a particular section in that act.

*Mr. Cobbe*.—The fourth section of that act.

*Mr. Plumer*.—Which had passed in the year 1799 and 1800; at what time was the attempt made by this board to charge lord Melville with interest?

*Mr. Cobbe*.—The board made the order for charging it on the 28th day of June, 1805.

*Mr. Plumer*.—That is a period of about five years after the act?

*Mr. Cobbe*.—Yes, it is so.

*Mr. Plumer*.—Do you recollect whether, prior to this, any instance had occurred of any person being charged or attempted to be charged with interest, under the fourth section of that act?

*Mr. Cobbe*.—Yes.

*Mr. Plumer*.—Under the fourth section?

*Mr. Cobbe*.—I believe they had.

*Mr. Plumer*.—Do you know any instance, and if you do, state what the instance was, and when.

*Mr. Cobbe*.—I recollect one in the case of *Mr. Mayor*, comptroller of the Stationery office.

*A Lord*.—I submit to your lordships that what the commissioners have charged in other instances, cannot at all mix itself with this question.

*Mr. Plumer*.—My lords, I am certainly corrected; but I was drawn into it by the introduction of this subject, by the honourable managers leading us into this matter of a charge attempted to be made, and afterwards over-ruled by a superior board.

*Mr. Whitbread*.—We contend we have not travelled out of the charge; and if this was a time to make a charge upon the learned counsel, we should ask him whether he has not?

[The witness was directed to withdraw.]

Then *William Huskisson*, esq. was called in, and, being sworn, was examined as follows :

*Mr. Whitbread*.—Were you some time secretary to the Treasury?

*Mr. Huskisson*.—I was.

*Mr. Whitbread*.—Were you so on the 20th of August, 1805?

*Mr. Huskisson*.—I was.

*Mr. Whitbread*.—Is the signature, affixed to that letter, your hand-writing?

*Mr. Huskisson*.—It is.

*Mr. Whitbread*.—What is that letter?

*Mr. Huskisson*.—It is a letter to the Commissioners for auditing the public accounts, written by myself, by the directions of the lords of the Treasury.

*Mr. Whitbread*.—My lords, this is to show that the lords commissioners of the Treasury acted upon this representation of lord Melville.

*Lord Chancellor*.—You have proved this, that lord Melville applied to the lords of the Treasury to be relieved from the interest, and that is evidence; but what was done in consequence of that, or what they did beyond the mere fact of the lords of the Treasury granting it, is no evidence.

*Mr. Whitbread*.—My lords, the Commons mean to show that lord Melville obtained his request.

*A Lord*.—The Commons have shown that already, by the best evidence which can be produced, which is the declaration of the account.

*Lord Chancellor*.—I beg this matter may be distinctly understood. What has been admitted, was admitted upon this principle, which, subject to their lordships correction, I will take the liberty of stating. There appeared to be upon the face of the book, a charge of interest; but there was a letter written desiring to have a remission of that interest, and afterwards, upon the 5th of October, 1805, the final balance was paid in, without the interest. You cannot add at all to that fact by showing the ground on which that remission was allowed. What does it signify, whether it was upon lord Melville's representation, or any other representation? With that the lords have, I conceive, no concern.

*Mr. Whitbread*.—My lords, the Commons are perfectly satisfied.

*Mr. Plumer*.—My lords, I beg leave to observe (with your lordships' permission) that the result will be, that your lordships will have put upon your minutes, not only the fact of the board's having attempted to charge lord Melville with interest, but (as it is induced by the document tendered by the honourable managers) the grounds also upon which that charge was made. Now, my lords, what the honourable managers were attempting to go on with, were the grounds upon which another board were of a contrary opinion. Your lordships have most properly determined that you cannot receive and enter into those con-



troverted grounds on one side or on the other. I am thoroughly persuaded that your lordships having been drawn in, to put upon your minutes the grounds upon which one board proceeded, and now properly excluding the grounds upon which a contrary opinion was entertained by another board, I am persuaded I need not say one word to your lordships to do away any effect from this circumstance. It must stand upon your minutes, but I am sure it will not have any improper effect.

*Lord Chancellor.*—Mr. Plumer, I will relieve you from all apprehension upon that head. The only ground upon which the other could be received as evidence was, that lord Melville admitted it in his letter, and it will no more signify than the colour of their clothes, upon what ground the lords of the Treasury did this act.

*Mr. Whitbread.*—My lords, the Commons have already declared themselves satisfied.—I now wish to read from your lordships' Journals, the date of the articles of impeachment being brought up to your lordships' house.

Then the following entry was read from the original Journal of the House of Lords.

Die Mercurij 26<sup>o</sup> Junij 1805.

"A message was brought from the House of Commons by Mr. Whitbread and others, as follows, viz.

"My lords;

"The Commons of the United Kingdom of Great Britain and Ireland in parliament assembled, have commanded me to impeach Henry lord viscount Melville of high crimes and misdemeanors, and I do here in their names, and in the names of all the Commons of the United Kingdom, impeach the said Henry lord viscount Melville of high crimes and misdemeanors; and I am further commanded by the House of Commons to acquaint your lordships that they will in due time exhibit particular articles against him, and make good the same."

*Mr. Whitbread.*—My lords, the Commons are anxious, for the satisfaction of your lordships, that the banking-book balances, corresponding with the official balances, and the results drawn from those official balances, as given in evidence before your lordships, should also be put in; they are contained in the banking-books.

*Mr. Plumer.*—With respect to what was read last, I did not catch whether it was the presenting of the original articles, or of the original articles together with the supplemental article. I should be glad to have the date when the supplemental article was brought in.

*Mr. Whitbread.*—The last entry was neither of one article nor the other; it was only a communication of the vote of impeachment.

*A Lord.*—My lords, I submit all this interlocutory matter, between the honourable managers and the learned counsel for the defen-

dant, is perfectly irrelevant; the date when the prosecution was commenced is proper evidence, and ought to excite no observation.

Then the following entries in the banking-books before delivered in were read:—

"Old account, 30th of September 1784, to balance from old account 1,508*l.* 12*s.* 3*d.*"

The same book.—"31st of December 1784, to balance from old account 2,508*l.* 12*s.* 3*d.*"

"The 31st of March 1785, to balance from old account 1,008*l.* 12*s.* 3*d.*"

"The 30th June 1785, to balance from old account, 5,008*l.* 12*s.* 3*d.*"

"The 30th of September 1785, to balance from old account 8*l.* 12*s.* 4*d.*"

"The 30th of November 1785, to balance from old account 2,508*l.* 12*s.* 3*d.*"

There is no entry in December or January.

"The 4th of February 1786, to balance from old account 1,508*l.* 12*s.* 3*d.*"

"The 30th June 1786, to balance from old account 8,307*l.* 4*s.* 4*d.*"

"The 31st August 1786, to balance from old account 307*l.* 4*s.* 4*d.*"

Then there is no entry till "the 27th February 1787, to balance from the old account 307*l.* 4*s.* 4*d.*"

The next entry is "the 31st of October 1787, to balance from old account 907*l.* 4*s.* 4*d.*"

There is no entry till "the 29th of March 1788, to balance from old account 407*l.* 4*s.* 4*d.*"

There is no entry till "the 31st May 1788, to balance from old account 3,407*l.* 4*s.* 4*d.*"

"The 27th September 1788, to balance from old account 407*l.* 4*s.* 4*d.*"

"The 30th September 1789, to balance from old account 107*l.* 4*s.* 4*d.*"

"The 31st December 1789, to balance from old account 207*l.* 4*s.* 4*d.*"

There is no balance till "the 30th September 1790, to balance from old account 707*l.* 4*s.* 4*d.*"

"The 30th of December 1790, to balance from old account 2,707*l.* 4*s.* 4*d.*"

*Mr. Plumer.*—My lords, I would submit, with great deference to the honourable managers, whether it would not save a great deal of time, if a list of those balances were given in by the honourable managers, and then one single question would apply to the whole.

*Mr. Whitbread.*—The managers would have been extremely glad if that intimation had been given by the learned counsel, at an earlier period; we had the list ready to put in, and would have done it earlier, if they had consented.

Then the paper proved by Mr. Fennell (page 1124) was delivered in and read, and is as follows:



A MONTHLY STATEMENT of the Balances in the First Treasurership Account of the  
Right Hon. HENRY DUNDAS, commencing 19th August 1782, to the Month of May 1800.

|                 | Treasurer's Balances. |    |    | Actual Balance at the Bank.                   |    |    | Difference.    |    |    |
|-----------------|-----------------------|----|----|-----------------------------------------------|----|----|----------------|----|----|
|                 | £.                    | s. | d. | £.                                            | s. | d. | £.             | s. | d. |
| 1782.           |                       |    |    |                                               |    |    |                |    |    |
| September ..... | 167,287               | 13 | 0  | 172,287                                       | 13 | 0  | 5,000          | 0  | 0  |
|                 |                       |    |    |                                               |    |    | Surplus.       |    |    |
| October .....   | 148,621               | 6  | 1  | 138,621                                       | 6  | 1  | 10,000         | 0  | 0  |
| November .....  | 155,121               | 6  | 1  | 147,121                                       | 6  | 1  | 8,000          | 0  | 0  |
| December .....  | 146,244               | 5  | 9  | 130,244                                       | 5  | 9  | 16,000         | 0  | 0  |
|                 |                       |    |    |                                               |    |    | Difference.    |    |    |
| 1783.           |                       |    |    |                                               |    |    |                |    |    |
| January .....   | 317,666               | 4  | 11 | 304,666                                       | 4  | 11 | 13,000         | 0  | 0  |
| February .....  | 142,169               | 3  | 11 | 129,169                                       | 3  | 11 | 13,000         | 0  | 0  |
| March .....     | 138,408               | 12 | 3  | 125,408                                       | 12 | 3  | 13,000         | 0  | 0  |
| April .....     | 89,408                | 12 | 3  | 66,408                                        | 12 | 3  | 23,000         | 0  | 0  |
| May .....       | 52,408                | 12 | 3  | 29,408                                        | 12 | 3  | 23,000         | 0  | 0  |
| June .....      | 22,408                | 12 | 3  | 408                                           | 12 | 3  | 22,000         | 0  | 0  |
| July ... ..     | 9,608                 | 12 | 3  | 2,008                                         | 12 | 3  | 7,600          | 0  | 0  |
| August .....    | 20,608                | 12 | 3  | 13,008                                        | 12 | 3  | Do.            |    |    |
| September ..... | 29,608                | 12 | 3  | 22,008                                        | 12 | 3  | Do.            |    |    |
| October .....   | 18,108                | 12 | 3  | 10,508                                        | 12 | 3  | 7,600          | 0  | 0  |
| November .....  | 25,108                | 12 | 3  | 17,508                                        | 12 | 3  | 7,600          | 0  | 0  |
| December .....  | 14,108                | 12 | 3  | 6,508                                         | 12 | 3  | Do.            |    |    |
| 1784.           |                       |    |    |                                               |    |    |                |    |    |
| March .....     | 6,608                 | 12 | 3  | 1,008                                         | 12 | 3  | 5,600          | 0  | 0  |
| June .....      | 3,108                 | 12 | 3  | 8                                             | 12 | 3  | 3,100          | 0  | 0  |
| Septamber ..... | 4,608                 | 12 | 3  | 1,508                                         | 12 | 3  | 3,100          | 0  | 0  |
| December .....  | 5,608                 | 12 | 3  | 2,508                                         | 12 | 3  | 3,100          | 0  | 0  |
| 1785.           |                       |    |    |                                               |    |    |                |    |    |
| March .....     | 2,608                 | 12 | 3  | 1,008                                         | 12 | 3  | 1,600          | 0  | 0  |
| June .....      | 6,608                 | 12 | 3  | 5,008                                         | 12 | 3  | Do.            |    |    |
| September ..... | 6,108                 | 12 | 3  | 4,508                                         | 12 | 3  | 1,600          | 0  | 0  |
| December .....  | 4,108                 | 12 | 3  | { No Balance at the }<br>{ Bank this Month. } |    |    |                |    |    |
| 1786.           |                       |    |    | Balance in November.                          |    |    |                |    |    |
| March .....     | 3,108                 | 12 | 3  | 2,508                                         | 12 | 3  | 1,600          | 0  | 0  |
| June .....      | 9,907                 | 4  | 4  | 1,508                                         | 12 | 3  | Do.            |    |    |
| September ..... | 7,907                 | 4  | 4  | 8,307                                         | 4  | 4  | Do.            |    |    |
| December .....  | 7,907                 | 4  | 4  | 307                                           | 4  | 4  | 7,600          | 0  | 0  |
|                 |                       |    |    | 307                                           | 4  | 4  | Do.            |    |    |
| 1787.           |                       |    |    |                                               |    |    |                |    |    |
| March .....     | 5,907                 | 4  | 4  | 307                                           | 4  | 4  | 5,600          | 0  | 0  |
| June .....      | 5,907                 | 4  | 4  | 307                                           | 4  | 4  | Do.            |    |    |
| September ..... | 5,907                 | 4  | 4  | 307                                           | 4  | 4  | Do.            |    |    |
| December .....  | 3,907                 | 4  | 4  | 907                                           | 4  | 4  | 3,000          | 0  | 0  |
| 1788.           |                       |    |    |                                               |    |    |                |    |    |
| March .....     | 8,407                 | 4  | 4  | 407                                           | 4  | 4  | 8,000          | 0  | 0  |
| June .....      | 5,907                 | 4  | 4  | 1,407                                         | 4  | 4  | 4,500          | 0  | 0  |
| September ..... | 5,407                 | 4  | 4  | 407                                           | 4  | 4  | 5,000          | 0  | 0  |
| December .....  | 5,407                 | 4  | 4  | 407                                           | 4  | 4  | 5,000          | 0  | 0  |
| 1789.           |                       |    |    |                                               |    |    |                |    |    |
| March .....     | 5,407                 | 4  | 4  | 407                                           | 4  | 4  | Do.            |    |    |
| June .....      | 4,907                 | 4  | 4  | 307                                           | 4  | 4  | 4,600          | 0  | 0  |
| September ..... | 4,707                 | 4  | 4  | 107                                           | 4  | 4  | 4,600          | 0  | 0  |
| December .....  | 3,207                 | 4  | 4  | 207                                           | 4  | 4  | 3,000          | 0  | 0  |
| 1790.           |                       |    |    |                                               |    |    |                |    |    |
| March .....     | 3,207                 | 4  | 4  | 207                                           | 4  | 4  | 3,000          | 0  | 0  |
| June .....      | 3,207                 | 4  | 4  | 207                                           | 4  | 4  | Do.            |    |    |
| September ..... | 2,707                 | 4  | 4  | 707                                           | 4  | 4  | 2,000          | 0  | 0  |
| December .....  | 2,707                 | 4  | 4  | 2,707                                         | 4  | 4  | No difference. |    |    |



|                 | Treasurer's Balances. |    |    | Actual Balance at the Bank. |    |    | Difference.    |    |    |
|-----------------|-----------------------|----|----|-----------------------------|----|----|----------------|----|----|
|                 | £.                    | s. | d. | £.                          | s. | d. | £.             | s. | d. |
| 1791.           |                       |    |    |                             |    |    |                |    |    |
| March .....     | 2,707                 | 4  | 4  | 707                         | 4  | 4  | 2,000          | 0  | 0  |
| June .....      | 2,707                 | 4  | 4  | Do.                         |    |    | Do.            |    |    |
| September ..... | 2,707                 | 4  | 4  | Do.                         |    |    | Do.            |    |    |
| December .....  | 3,500                 | 0  | 0  | 3,500                       | 0  | 0  | No difference. |    |    |
| 1792.           |                       |    |    |                             |    |    |                |    |    |
| September ..... | 2,800                 | 0  | 0  | 800                         | 0  | 0  | 2,000          | 0  | 0  |
| December .....  | 2,400                 | 0  | 0  | 400                         | 0  | 0  | Do.            |    |    |
| 1793.           |                       |    |    |                             |    |    |                |    |    |
| September ..... | 1,950                 | 0  | 0  | 200                         | 0  | 0  | 1,750          | 0  | 0  |
| December .....  | 1,950                 | 0  | 0  | 1,950                       | 0  | 0  | No difference. |    |    |
| 1794.           |                       |    |    |                             |    |    |                |    |    |
| September ..... | 1,850                 | 0  | 0  | 1,850                       | 0  | 0  | No difference. |    |    |
| December .....  | 1,850                 | 0  | 0  | Do.                         |    |    | Do.            |    |    |
| 1795.           |                       |    |    |                             |    |    |                |    |    |
| September ..... | 1,850                 | 0  | 0  | Do.                         |    |    | Do.            |    |    |
| 1800.           |                       |    |    |                             |    |    |                |    |    |
| May .....       | 5,359                 | 3  | 11 | Same.                       |    |    | Do.            |    |    |
| June .....      | Do.                   |    |    | 25                          | 15 | 7  | 5,333          | 8  | 4  |

Then *George Fennell*, esq., was again called in, and examined as follows:

*Mr. Whitbread*.—Have you examined and signed that account.

*Mr. Fennell*.—I have.

*Mr. Whitbread*.—Do you know that account to be an accurate result from the books of the Navy-pay-office? Have you examined it yourself?

*Mr. Fennell*.—I have, by the books kept by the paymaster.

*Mr. Whitbread*.—Has it been examined with your own books, as public accountant at the Navy-pay-office?

*Mr. Fennell*.—It has.

*Mr. Whitbread*.—Does it at all proceed from your own examination of the office books?

*Mr. Fennell*.—With the addition of the Bank books.

[The witness was directed to withdraw.]

*Mr. Plumer*.—The witness has stated this to be an account of the monthly *deficiencies*; I have no objection to it if the managers will change the word to *differences*.

*Mr. Whitbread*.—We have no objection to make that alteration in it.

The paper referred to by the witness was then delivered in, and is as follows:

A MONTHLY STATEMENT of the Differences between the Treasurer's Balances and the Balances in the Bank, upon the Account of the Right Honorable HENRY DUNDAS, as Treasurer of the Navy, commencing with the Month of January 1786, the Date of Mr. TROTTER's Appointment as Paymaster.

|                 | Cash Balance in the Hands of the Treasurer. |    |    | Actual Balance at the Bank.          |    |    | Difference. |    |    |
|-----------------|---------------------------------------------|----|----|--------------------------------------|----|----|-------------|----|----|
|                 | £.                                          | s. | d. | £.                                   | s. | d. | £.          | s. | d. |
| 1786.           |                                             |    |    |                                      |    |    |             |    |    |
| January .....   | 79,514                                      | 10 | 3  | Not Balanced at the Bank this Month. |    |    |             |    |    |
| February .....  | 43,014                                      | 10 | 3  | 33,014                               | 10 | 3  | 10,000      | 0  | 0  |
| March .....     | 34,077                                      | 10 | 3  | 24,077                               | 10 | 3  | 10,000      | 0  | 0  |
| April .....     | 49,202                                      | 10 | 3  | 39,202                               | 10 | 3  | 10,000      | 0  | 0  |
| May .....       | 54,769                                      | 11 | 7  | 34,769                               | 11 | 7  | 20,000      | 0  | 0  |
| June .....      | 42,559                                      | 11 | 7  | 22,559                               | 11 | 7  | 20,000      | 0  | 0  |
| July .....      | 83,202                                      | 9  | 2  | 63,202                               | 9  | 2  | 20,000      | 0  | 0  |
| August .....    | 371,835                                     | 17 | 11 | 315,835                              | 17 | 11 | 56,000      | 0  | 0  |
| September ..... | 72,739                                      | 12 | 11 | 16,739                               | 12 | 11 | 56,000      | 0  | 0  |
| October .....   | 51,239                                      | 12 | 11 | 5,239                                | 12 | 11 | 46,000      | 0  | 0  |
| November .....  | 59,870                                      | 0  | 1  | 10,870                               | 0  | 1  | 49,000      | 0  | 0  |
| December .....  | 81,942                                      | 0  | 1  | 25,942                               | 0  | 1  | 56,000      | 0  | 0  |



|                 | Cash Balance in the Hands of<br>the Treasurer. |    |                                | Actual Balance at the Bank.          |    |    | Difference.    |    |                                |
|-----------------|------------------------------------------------|----|--------------------------------|--------------------------------------|----|----|----------------|----|--------------------------------|
|                 | £.                                             | s. | d.                             | £.                                   | s. | d. | £.             | s. | d.                             |
| 1787.           |                                                |    |                                |                                      |    |    |                |    |                                |
| January .....   | 67,128                                         | 5  | 1                              | 15,128                               | 5  | 1  | 52,000         | 0  | 0                              |
| February .....  | 66,728                                         | 9  | 10 <sup>3</sup> / <sub>4</sub> | 12,728                               | 9  | 11 | 53,999         | 19 | 11 <sup>3</sup> / <sub>4</sub> |
| March .....     | 179,028                                        | 4  | 3 <sup>3</sup> / <sub>4</sub>  | 132,028                              | 4  | 4  | 46,999         | 19 | 11 <sup>1</sup> / <sub>4</sub> |
| April .....     | 26,564                                         | 9  | 3 <sup>1</sup> / <sub>4</sub>  | 43,064                               | 9  | 4  | 53,499         | 19 | 11 <sup>3</sup> / <sub>4</sub> |
| May .....       | 55,492                                         | 6  | 8 <sup>1</sup> / <sub>4</sub>  | Not Balanced at the Bank this Month. |    |    |                |    |                                |
| June .....      | 52,899                                         | 16 | 1                              | 6,399                                | 16 | 1  | 46,500         | 0  | 0                              |
| July .....      | 71,070                                         | 6  | 9                              | 24,570                               | 6  | 9  | 46,500         | 0  | 0                              |
| August .....    | 67,600                                         | 6  | 9                              | 21,100                               | 6  | 9  | 46,500         | 0  | 0                              |
| September ..... | 83,427                                         | 6  | 2                              | 36,927                               | 6  | 2  | 46,500         | 0  | 0                              |
| October .....   | 92,153                                         | 7  | 6                              | 40,053                               | 7  | 6  | 52,100         | 0  | 0                              |
| November .....  | 63,665                                         | 16 | 0                              | 23,565                               | 16 | 0  | 40,100         | 0  | 0                              |
| December .....  | 459,369                                        | 11 | 8                              | 406,269                              | 11 | 8  | 53,100         | 0  | 0                              |
| 1788.           |                                                |    |                                |                                      |    |    |                |    |                                |
| January .....   | 104,669                                        | 11 | 8                              | 51,569                               | 11 | 8  | 53,100         | 0  | 0                              |
| February .....  | 83,669                                         | 11 | 8                              | 41,569                               | 11 | 8  | 42,100         | 0  | 0                              |
| March .....     | 119,848                                        | 16 | 6                              | 82,748                               | 16 | 6  | 37,100         | 0  | 0                              |
| April .....     | 98,894                                         | 11 | 6                              | 49,294                               | 11 | 6  | 49,600         | 0  | 0                              |
| May .....       | 91,394                                         | 11 | 6                              | 29,794                               | 11 | 6  | 61,600         | 0  | 0                              |
| June .....      | 73,253                                         | 16 | 6                              | 16,653                               | 16 | 6  | 56,600         | 0  | 0                              |
| July .....      | 64,938                                         | 7  | 3                              | 11,338                               | 7  | 3  | 53,600         | 0  | 0                              |
| August .....    | 60,040                                         | 15 | 11                             | 11,440                               | 15 | 11 | 48,600         | 0  | 0                              |
| September ..... | 83,442                                         | 0  | 1                              | 34,842                               | 0  | 1  | 48,600         | 0  | 0                              |
| October .....   | 280,293                                        | 14 | 10                             | 231,693                              | 14 | 10 | 48,600         | 0  | 0                              |
| November .....  | 59,417                                         | 8  | 11                             | 10,817                               | 8  | 11 | 48,600         | 0  | 0                              |
| December .....  | 57,779                                         | 8  | 11                             | 9,179                                | 8  | 11 | 48,600         | 0  | 0                              |
| 1789.           |                                                |    |                                |                                      |    |    |                |    |                                |
| January .....   | 52,491                                         | 8  | 11                             | 3,891                                | 8  | 11 | 48,600         | 0  | 0                              |
| February .....  | 46,061                                         | 8  | 11                             | 7,461                                | 8  | 11 | 38,600         | 0  | 0                              |
| March .....     | 187,721                                        | 13 | 2                              | 151,121                              | 13 | 2  | 36,600         | 0  | 0                              |
| April .....     | 87,131                                         | 15 | 2                              | 45,431                               | 15 | 2  | 41,700         | 0  | 0                              |
| May .....       | 60,730                                         | 9  | 9                              | 19,030                               | 9  | 9  | 41,700         | 0  | 0                              |
| June .....      | 83,705                                         | 14 | 9                              | 50,005                               | 14 | 9  | 33,700         | 0  | 0                              |
| July .....      | 88,744                                         | 16 | 2                              | 37,044                               | 16 | 2  | 51,700         | 0  | 0                              |
| August .....    | 80,791                                         | 16 | 2                              | 26,591                               | 16 | 2  | 54,200         | 0  | 0                              |
| September ..... | 84,879                                         | 16 | 2                              | 30,679                               | 16 | 2  | 54,200         | 0  | 0                              |
| October .....   | 482,193                                        | 0  | 5                              | 427,993                              | 0  | 5  | 54,200         | 0  | 0                              |
| November .....  | 93,123                                         | 0  | 5                              | 36,493                               | 0  | 5  | 56,700         | 0  | 0                              |
| December .....  | 108,281                                        | 15 | 10                             | 52,481                               | 15 | 10 | 55,800         | 0  | 0                              |
| 1790.           |                                                |    |                                |                                      |    |    |                |    |                                |
| January .....   | 104,886                                        | 15 | 10                             | 54,086                               | 15 | 10 | 50,800         | 0  | 0                              |
| February .....  | 86,017                                         | 3  | 4                              | 30,217                               | 3  | 4  | 55,800         | 0  | 0                              |
| March .....     | 127,362                                        | 19 | 5                              | 71,562                               | 19 | 5  | 55,800         | 0  | 0                              |
| April .....     | 141,262                                        | 19 | 5                              | 79,462                               | 19 | 5  | 61,800         | 0  | 0                              |
| May .....       | 86,642                                         | 19 | 9                              | 21,842                               | 19 | 9  | 64,800         | 0  | 0                              |
| June .....      | 85,942                                         | 19 | 9                              | 21,142                               | 19 | 9  | 64,800         | 0  | 0                              |
| July .....      | 129,480                                        | 12 | 4 <sup>3</sup> / <sub>4</sub>  | Not Balanced at the Bank this Month. |    |    |                |    |                                |
| August .....    | 111,480                                        | 12 | 4                              | 53,680                               | 12 | 4  | 57,800         | 0  | 0                              |
| September ..... | 104,460                                        | 12 | 4                              | 46,660                               | 12 | 4  | 57,800         | 0  | 0                              |
| October .....   | 115,040                                        | 6  | 2                              | 61,240                               | 6  | 2  | 53,800         | 0  | 0                              |
| November .....  | 83,350                                         | 6  | 2                              | 13,550                               | 6  | 2  | 69,800         | 0  | 0                              |
| December .....  | 102,897                                        | 16 | 1                              | 102,897                              | 16 | 1  | No Deficiency. |    |                                |
| 1791.           |                                                |    |                                |                                      |    |    |                |    |                                |
| January .....   | 145,958                                        | 8  | 3                              | 95,758                               | 8  | 3  | 50,200         | 0  | 0                              |
| February .....  | 106,958                                        | 8  | 3                              | 38,758                               | 8  | 3  | 68,200         | 0  | 0                              |
| March .....     | 107,245                                        | 9  | 9                              | 39,897                               | 17 | 3  | 67,347         | 12 | 6                              |
| April .....     | 167,693                                        | 12 | 11                             | 99,493                               | 12 | 11 | 68,200         | 0  | 0                              |
| May .....       | 84,693                                         | 12 | 11                             | 42,493                               | 12 | 11 | 42,200         | 0  | 0                              |
| June .....      | 62,828                                         | 12 | 11                             | 10,628                               | 12 | 11 | 52,200         | 0  | 0                              |
| July .....      | 97,802                                         | 10 | 0                              | 41,602                               | 10 | 0  | 56,200         | 0  | 0                              |
| August .....    | 124,528                                        | 8  | 7                              | 62,828                               | 8  | 7  | 61,700         | 0  | 0                              |
| September ..... | 75,776                                         | 19 | 8                              | 9,776                                | 19 | 8  | 66,000         | 0  | 0                              |
| October .....   | 255,450                                        | 3  | 6                              | 192,950                              | 3  | 6  | 62,500         | 0  | 0                              |
| November .....  | 95,950                                         | 3  | 6                              | 23,950                               | 3  | 6  | 72,000         | 0  | 0                              |



|                 | Cash Balance in the Hands of<br>the Treasurer. |    |    | Actual Balance at the Bank.          |    |    | Difference. |    |    |
|-----------------|------------------------------------------------|----|----|--------------------------------------|----|----|-------------|----|----|
|                 | £.                                             | s. | d. | £.                                   | s. | d. | £.          | s. | d. |
| December .....  | 93,443                                         | 7  | 2  | 73,454                               | 17 | 6  | 19,988      | 9  | 8  |
| 1792.           |                                                |    |    |                                      |    |    |             |    |    |
| January .....   | 553,176                                        | 18 | 5  | 472,188                              | 8  | 9  | 80,988      | 9  | 8  |
| February .....  | 118,557                                        | 15 | 1  | 26,569                               | 5  | 5  | 91,988      | 9  | 8  |
| March .....     | 144,981                                        | 2  | 1  | 42,592                               | 12 | 5  | 102,388     | 9  | 8  |
| April .....     | 114,481                                        | 2  | 1  | 11,992                               | 12 | 5  | 102,488     | 9  | 8  |
| May .....       | 123,057                                        | 12 | 2  | 34,569                               | 2  | 6  | 88,488      | 9  | 8  |
| June .....      | 84,984                                         | 13 | 10 | 19,496                               | 4  | 2  | 65,488      | 9  | 8  |
| July .....      | 105,576                                        | 14 | 11 | 44,288                               | 5  | 3  | 61,288      | 9  | 8  |
| August .....    | 81,385                                         | 17 | 10 | 5,597                                | 8  | 2  | 75,788      | 9  | 8  |
| September ..... | 107,739                                        | 17 | 10 | 22,693                               | 18 | 2  | 85,045      | 19 | 8  |
| October .....   | 270,240                                        | 16 | 5  | 173,994                              | 16 | 9  | 96,245      | 19 | 8  |
| November .....  | 95,740                                         | 16 | 5  | 8,694                                | 16 | 9  | 87,045      | 19 | 8  |
| December .....  | 88,219                                         | 1  | 5  | 61,742                               | 1  | 9  | 26,476      | 19 | 8  |
| 1793.           |                                                |    |    |                                      |    |    |             |    |    |
| January .....   | 88,719                                         | 1  | 5  | 11,242                               | 1  | 9  | 77,476      | 19 | 8  |
| February .....  | 96,886                                         | 4  | 4  | 26,409                               | 4  | 8  | 70,476      | 19 | 8  |
| March .....     | 132,786                                        | 4  | 4  | 52,309                               | 4  | 8  | 80,476      | 19 | 8  |
| April .....     | 153,520                                        | 9  | 6  | 50,643                               | 9  | 10 | 102,876     | 19 | 8  |
| May .....       | 99,520                                         | 9  | 6  | 10,643                               | 9  | 10 | 88,876      | 19 | 8  |
| June .....      | 111,663                                        | 8  | 0  | 39,938                               | 8  | 4  | 71,724      | 19 | 8  |
| July .....      | 144,613                                        | 12 | 6  | 45,888                               | 12 | 10 | 98,724      | 19 | 8  |
| August .....    | 167,613                                        | 12 | 6  | 79,388                               | 12 | 10 | 88,224      | 19 | 8  |
| September ..... | 126,193                                        | 12 | 6  | 16,193                               | 12 | 6  | 110,000     | 0  | 0  |
| October .....   | 292,754                                        | 1  | 2  | 177,754                              | 1  | 2  | 115,000     | 0  | 0  |
| November .....  | 121,254                                        | 1  | 2  | 20,254                               | 1  | 2  | 101,000     | 0  | 0  |
| December .....  | 148,012                                        | 9  | 0  | 120,986                              | 11 | 3  | 27,025      | 17 | 9  |
| 1794.           |                                                |    |    |                                      |    |    |             |    |    |
| January .....   | 164,587                                        | 6  | 3  | 46,561                               | 8  | 6  | 118,025     | 17 | 9  |
| February .....  | 147,337                                        | 6  | 3  | 9,311                                | 8  | 6  | 138,025     | 17 | 9  |
| March .....     | 148,619                                        | 5  | 3  | 77,193                               | 7  | 6  | 71,425      | 17 | 9  |
| April .....     | 226,066                                        | 4  | 11 | 64,640                               | 7  | 2  | 161,425     | 17 | 9  |
| May .....       | 183,566                                        | 4  | 11 | 42,140                               | 7  | 2  | 141,425     | 17 | 9  |
| June .....      | 163,878                                        | 5  | 5  | 50,452                               | 7  | 8  | 113,425     | 17 | 9  |
| July .....      | 193,878                                        | 5  | 5  | 54,452                               | 7  | 8  | 139,425     | 17 | 9  |
| August .....    | 174,859                                        | 18 | 10 | 45,434                               | 1  | 1  | 129,425     | 17 | 9  |
| September ..... | 191,444                                        | 18 | 10 | 52,019                               | 1  | 1  | 139,425     | 17 | 9  |
| October .....   | 205,782                                        | 14 | 4  | Not balanced at the Bank this Month. |    |    |             |    |    |
| November .....  | 196,652                                        | 14 | 7  | 116,226                              | 16 | 10 | 80,425      | 17 | 9  |
| December .....  | 190,119                                        | 5  | 5  | 161,360                              | 17 | 8  | 128,758     | 7  | 9  |
| 1795.           |                                                |    |    |                                      |    |    |             |    |    |
| January .....   | 304,533                                        | 10 | 0  | 98,707                               | 12 | 3  | 205,825     | 17 | 9  |
| February .....  | 310,753                                        | 1  | 7  | 100,927                              | 3  | 10 | 209,825     | 17 | 9  |
| March .....     | 406,277                                        | 10 | 5  | 115,951                              | 12 | 8  | 290,325     | 17 | 9  |
| April .....     | 933,299                                        | 19 | 1  | 622,974                              | 1  | 4  | 310,325     | 17 | 9  |
| May .....       | 429,574                                        | 15 | 11 | 152,248                              | 18 | 2  | 277,325     | 17 | 9  |
| June .....      | 310,795                                        | 13 | 1  | 133,469                              | 15 | 4  | 177,325     | 17 | 9  |
| July .....      | 729,592                                        | 19 | 5  | 472,267                              | 1  | 8  | 257,325     | 17 | 9  |
| August .....    | 616,330                                        | 4  | 10 | 376,006                              | 7  | 1  | 240,325     | 17 | 9  |
| September ..... | 647,566                                        | 13 | 2  | 157,240                              | 15 | 5  | 490,325     | 17 | 9  |
| October .....   | 620,790                                        | 17 | 9  | 333,465                              | 0  | 0  | 287,325     | 17 | 9  |
| November .....  | 476,222                                        | 4  | 10 | 422,896                              | 7  | 1  | 53,325      | 17 | 9  |
| December .....  | 555,755                                        | 4  | 2  | 525,438                              | 8  | 1  | 30,316      | 16 | 1  |
| 1796.           |                                                |    |    |                                      |    |    |             |    |    |
| January .....   | 630,464                                        | 10 | 1  | 505,138                              | 12 | 4  | 125,325     | 17 | 9  |
| February .....  | 524,740                                        | 6  | 9  | 307,898                              | 12 | 7  | 216,841     | 14 | 2  |
| March .....     | 341,647                                        | 15 | 5  | 147,147                              | 15 | 5  | 194,500     | 0  | 0  |
| April .....     | 92,647                                         | 15 | 5  | 39,647                               | 15 | 5  | 53,000      | 0  | 0  |
| May .....       | 200,775                                        | 6  | 2  | 46,775                               | 6  | 2  | 154,000     | 0  | 0  |
| June .....      | 185,069                                        | 2  | 10 | 33,930                               | 2  | 10 | 151,139     | 0  | 0  |
| July .....      | 496,339                                        | 2  | 0  | 398,339                              | 2  | 0  | 98,000      | 0  | 0  |
| August .....    | 270,326                                        | 6  | 9  | 145,326                              | 6  | 9  | 125,000     | 0  | 0  |



|                 | Cash Balance in the Hands of<br>the Treasurer. |    |    | Actual Balance at the Bank. |    |    | Difference. |    |    |
|-----------------|------------------------------------------------|----|----|-----------------------------|----|----|-------------|----|----|
|                 | £.                                             | s. | d. | £.                          | s. | d. | £.          | s. | d. |
| September ..... | 297,546                                        | 13 | 3  | 155,606                     | 13 | 4  | 141,939     | 19 | 11 |
| October .....   | 340,016                                        | 11 | 8  | 192,076                     | 11 | 7  | 147,940     | 0  | 1  |
| November ...    | 389,342                                        | 8  | 9  | 131,402                     | 8  | 9  | 257,940     | 0  | 0  |
| December .....  | 255,261                                        | 11 | 7  | 179,848                     | 6  | 9  | 75,413      | 4  | 10 |
| 1797.           |                                                |    |    |                             |    |    |             |    |    |
| January .....   | 240,415                                        | 4  | 2  | 98,415                      | 4  | 2  | 142,000     | 0  | 0  |
| February .....  | 103,415                                        | 4  | 2  | 22,415                      | 4  | 2  | 81,000      | 0  | 0  |
| March .....     | 255,421                                        | 11 | 11 | 197,421                     | 11 | 11 | 58,000      | 0  | 0  |
| April .....     | 282,317                                        | 8  | 2  | 86,817                      | 8  | 2  | 195,500     | 0  | 0  |
| May .....       | 680,019                                        | 19 | 8  | 484,519                     | 19 | 8  | 195,500     | 0  | 0  |
| June .....      | 705,055                                        | 10 | 3  | 423,296                     | 5  | 0  | 281,759     | 5  | 3  |
| July .....      | 214,298                                        | 8  | 10 | 69,190                      | 10 | 10 | 145,107     | 18 | 0  |
| August .....    | 410,150                                        | 16 | 7  | 193,150                     | 16 | 7  | 217,000     | 0  | 0  |
| September ..... | 197,166                                        | 4  | 6  | 17,381                      | 12 | 4  | 179,784     | 12 | 2  |
| October .....   | 286,110                                        | 10 | 5  | 93,317                      | 6  | 4  | 192,793     | 4  | 1  |
| November .....  | 142,180                                        | 4  | 9  | 47,395                      | 12 | 7  | 94,784      | 12 | 2  |
| December .....  | 160,453                                        | 8  | 4  | 101,812                     | 13 | 6  | 58,640      | 14 | 10 |
| 1798.           |                                                |    |    |                             |    |    |             |    |    |
| January .....   | 237,361                                        | 14 | 7  | 137,796                     | 1  | 3  | 99,565      | 13 | 4  |
| February .....  | 252,670                                        | 3  | 10 | 93,670                      | 3  | 10 | 159,000     | 0  | 0  |
| March .....     | 226,637                                        | 0  | 4  | 122,137                     | 0  | 4  | 104,500     | 0  | 0  |
| April .....     | 158,122                                        | 5  | 4  | 65,122                      | 5  | 4  | 93,000      | 0  | 0  |
| May .....       | 427,064                                        | 19 | 10 | 137,527                     | 14 | 10 | 289,537     | 5  | 0  |
| June .....      | 265,669                                        | 12 | 9  | 40,169                      | 12 | 9  | 225,500     | 0  | 0  |
| July .....      | 382,843                                        | 9  | 2  | 140,843                     | 9  | 2  | 242,000     | 0  | 0  |
| August .....    | 270,638                                        | 10 | 0  | 17,138                      | 10 | 0  | 253,500     | 0  | 0  |
| September ..... | 279,756                                        | 19 | 0  | 57,256                      | 19 | 0  | 222,500     | 0  | 0  |
| October .....   | 452,980                                        | 18 | 10 | 193,480                     | 18 | 10 | 259,500     | 0  | 0  |
| November .....  | 312,525                                        | 3  | 3  | 27,525                      | 3  | 3  | 285,000     | 0  | 0  |
| December .....  | 196,301                                        | 10 | 4  | 142,160                     | 15 | 6  | 54,140      | 14 | 10 |
| 1799.           |                                                |    |    |                             |    |    |             |    |    |
| January .....   | 284,225                                        | 15 | 9  | 62,225                      | 15 | 9  | 222,000     | 0  | 0  |
| February .....  | 324,390                                        | 18 | 3  | 119,533                     | 9  | 2  | 204,857     | 9  | 1  |
| March .....     | 376,936                                        | 10 | 1  | 158,936                     | 10 | 1  | 218,000     | 0  | 0  |
| April .....     | 227,012                                        | 12 | 1  | 80,171                      | 2  | 7  | 146,841     | 9  | 6  |
| May .....       | 232,529                                        | 17 | 4  | 74,529                      | 17 | 4  | 158,000     | 0  | 0  |
| June .....      | 209,029                                        | 17 | 4  | 46,029                      | 17 | 4  | 163,000     | 0  | 0  |
| July .....      | 290,786                                        | 6  | 0  | 23,786                      | 6  | 0  | 267,000     | 0  | 0  |
| August .....    | 250,583                                        | 9  | 1  | 23,583                      | 9  | 1  | 227,000     | 0  | 0  |
| September ..... | 236,583                                        | 9  | 1  | 117,583                     | 9  | 1  | 119,000     | 0  | 0  |
| October .....   | 294,710                                        | 9  | 0  | 101,710                     | 9  | 0  | 193,000     | 0  | 0  |
| November .....  | 261,710                                        | 9  | 0  | 38,710                      | 9  | 0  | 223,000     | 0  | 0  |
| December .....  | 353,051                                        | 3  | 10 | 298,910                     | 9  | 0  | 54,140      | 14 | 10 |
| 1800.           |                                                |    |    |                             |    |    |             |    |    |
| January .....   | 744,951                                        | 4  | 0  | 453,951                     | 4  | 0  | 291,000     | 0  | 0  |
| February .....  | 328,951                                        | 4  | 0  | 73,951                      | 4  | 0  | 255,000     | 0  | 0  |
| March .....     | 315,539                                        | 12 | 2  | 115,539                     | 12 | 2  | 200,000     | 0  | 0  |
| April .....     | 456,806                                        | 11 | 0  | 112,366                     | 11 | 0  | 344,500     | 0  | 0  |

Navy Pay Office, 26th April, 1806.

Examined,  
GEO. FENNELL.

Then John Meheux, esq., was again called in.

Mr. Whitbread.—Do you recollect at what period the commencement of payment of salaries to the officers of the board of control took place?

Mr. Plumer.—My lords, I submit whether this is quite regular. The witness was here yesterday, at which time he was examined on the part of the honourable managers, and

was cross-examined by us; and he was, I believe, either re-examined, or they might have re-examined him then. Now, I understood the honourable manager, in a prior stage of this business to negative any right on our part to cross-examine the honourable manager himself, unless we did it then. He laid in his claim to resist any examination on a posterior day. And will not this prolong the business infinitely, if a witness examined,



cross-examined, and re-examined, is to be called up again?

Mr. *Whitbread*.—My lords, the examination would not have lasted half the length of the time taken up to resist it; but the Commons will put in the act of the 33rd of the present king, chapter 52, which appointed 5,000*l.* a year, at the discretion of his majesty, to be divided among the officers of that board. I wish to ask the witness if he does not know that lord Melville is now in the receipt of a pension from the India company?

Lord Chancellor.—Any question put to this witness (under the circumstances) must be a question put by leave of the Court.

Mr. *Whitbread*.—My lords, if the learned counsel object to this, I will waive it.

Mr. *Plumer*.—My lords, it is only that the business may not be protracted for ever.

[The witness was directed to withdraw.]

Mr. *Whitbread*.—My lords, as the learned counsel thought it right to endeavour to show upon their cross-examination, how lord Melville acted for the public; we were willing to show how lord Melville was paid by the public.

My lords, the Commons wish to call your lordships' attention to an attested entry in the Commons' Journal, where the act of the 33rd of the king, cap. 52, was delivered in to show that Mr. Secretary Dundas was one of the persons ordered to bring in that bill.

Lord Chancellor.—Has that been examined?

Mr. *Whitbread*.—I understand it has not; but the Commons will put in an attested copy from the Parliament-office.

Then an entry in the Journals of the Commons was read as follows:

“Mercurij, 8<sup>o</sup> Die Maij, Anno 33<sup>o</sup>  
Georgij III. Regis, 1793.

“Ordered, that a bill or bills be brought in upon the said resolutions, and that Mr. Secretary Dundas, Mr. Chancellor of the Exchequer, Mr. Attorney General, and Mr. Solicitor General, do prepare and bring in the same.”

Mr. *Whitbread*.—My lords, the Commons now propose to call before your lordships, one or two witnesses on single points, which are necessary for the conclusion of their case.

Then John Spottiswoode, esq., was called in, and, being sworn, was examined as follows:

Mr. *Whitbread*.—Are you a solicitor, now acting in London?

Mr. *Spottiswoode*.—Yes.

Mr. *Whitbread*.—Were you in partnership with your late father, in the same profession?

Mr. *Spottiswoode*.—Yes.

Mr. *Whitbread*.—Do you know whether your late father acted as lord Melville's solicitor?

Mr. *Spottiswoode*.—If the question means to ask generally, I say no—if to ask as to

his acting occasionally, in various detached business, I answer yes.

[The witness was directed to withdraw.]

Mr. *Whitbread*.—My lords, the Commons now propose to call Mr. Hugh Warrender.

Then Hugh Warrender, esq., was called in, and, being sworn, was examined as follows:

Mr. *Whitbread*.—Are you deputy keeper of the signet?

Mr. *Warrender*.—I am.

Mr. *Whitbread*.—Was lord Melville at any time keeper of the signet of Scotland?

Mr. *Warrender*.—He was.

Mr. *Whitbread*.—Is he so now?

Mr. *Warrender*.—He is not.

Mr. *Whitbread*.—How long has his lordship ceased to be keeper of the signet?

Mr. *Warrender*.—About six years.

Mr. *Whitbread*.—Who is the present keeper of the signet?

Mr. *Warrender*.—The honourable Robert Dundas.

Mr. *Whitbread*.—Was the reversion of keeper of the signet granted to the honourable Robert Dundas, previous to lord Melville's resignation?

Lord Chancellor.—That must appear from the appointment.

Mr. *Whitbread*.—Do you know the actual average income of the keeper of the signet?

Mr. *Warrender*.—It is very various—I suppose taking the whole together, upon the average, it is from 1,800*l.* to 2,000*l.* a year.

Mr. *Whitbread*.—When you speak of contingencies, do you mean that there are a number of valuable offices which are at the disposal of that office, which produce, in some years, a considerable amount?

Mr. *Warrender*.—I take all into consideration.

Mr. *Whitbread*.—But do they not arise in that mode, by the sale of valuable offices belonging to it?

Mr. *Warrender*.—They do.

Mr. *Whitbread*.—So as to produce in one or two years many thousands, and at other periods nothing at all.

Mr. *Warrender*.—They do.

A Lord.—You have stated, that upon the average, the produce of this office is from 1,800*l.* to 2,000*l.* a year—how many years back do you take that average upon?

Mr. *Warrender*.—I was only told since I came into this room this morning, that I should be asked that question; I have had no time to consider it maturely, it was just what occurred to my mind upon the present moment.

A Lord.—Did this occur to your mind as the average of five years, or the average of twenty?

Mr. *Warrender*.—I think it occurred upon the general average, taking all years into consideration, but it is very loose, it is upon the moment.



*A Lord.*—Down to what period did lord Melville continue to be lord advocate of Scotland?

*Mr. Warrender.*—I do not at present recollect—it must have been between 1780 and 1790, I think.

*A Lord.*—I believe it was to 1784. The salary and emoluments attending upon that office, I scarcely need ask you, were very considerable?

*Mr. Warrender.*—They are certainly understood to be so.

*A Lord.*—You did not mention when lord Melville became keeper of the signet, do you recollect that?

*Mr. Warrender.*—I believe he became joint keeper of the signet along with the late Mr. Andrew Stewart, about the year 1778.

[The witness was directed to withdraw.]

*Mr. Whitbread.*—My lords, we wish now to call Mr. Robert Dundas, writer to the signet, in Scotland.

Then *Robert Dundas*, esq., was called in, and being sworn, was examined as follows:

*Mr. Whitbread.*—Are you in the receipt of lord Melville's salary, on his account, as keeper of the privy seal in Scotland?

*Mr. Dundas.*—I am.

*Mr. Whitbread.*—How long has lord Melville held that office?

*Mr. Dundas.*—Since June 1800.

*Mr. Whitbread.*—Has any addition been made to the salary of that office, or any contingent addition, since 1800?

*Mr. Plumer.*—My lords, I do not see how that is material; but, if it is, it must appear by written documents.

*Mr. Whitbread.*—Are you in the receipt of lord Melville's income in Scotland generally?

*Mr. Dundas.*—I am.

[The witness was directed to withdraw.]

*Mr. Whitbread.*—The very last thing to which I wish to call your lordships' attention is, that having shown that a certain release was executed by lord Melville, in Scotland, on the 18th February, 1803; I wish to show your lordships, that lord Melville was actually in London, on the 20th of April, in the same year, and for that purpose, I refer to your lordships' Journals upon the subject; wherein it is stated, that on the 20th of April 1803, lord Melville took his seat in the house of peers.

*Mr. Plumer.*—If any thing turns upon the precise day, I have no objection to the fact being so stated.

*Mr. Whitbread.*—My lords, with that the Commons close their evidence.

[*Note.*—As it is fit that the forms of the House of Lords, upon trials before them, should be known and correctly recorded, we think it right to observe, that all ques-

tions, whether from the managers or from the counsel of viscount Melville, were addressed by the one and the other to the House, and put to the witnesses by the lord chancellor, although we have not put the questions, as so put by the lord chancellor, except in those instances where the question proceeded from himself.]

*Mr. Solicitor General* (sir Samuel Romilly).—My lords, the Commons having concluded the evidence which they had to offer to your lordships; it is now become my duty to sum up and to observe upon that evidence. And, my lords, in the discharge of that duty, I shall be careful in every observation which I make to your lordships, to bear in mind,—and if I could think it necessary, I would entreat your lordships to bear in mind—that the evidence upon which I am to observe is the evidence only of the accusers: that the most important part of this, as of every criminal proceeding, yet remains: that till the defendant has been heard, till his witnesses have been examined, although the case may appear to be proved, it is impossible to say that any fact has been established. The witnesses of the defendant may contradict that which your lordships have heard sworn, they may explain that which appears to be doubtful, they may clear up that which is suspicious.

Great injustice, undoubtedly, would be done to any accused party, if you were to take the facts which he has not yet had an opportunity of disproving as being finally established; or, if you were even to consider all the force and extent of them, without recollecting that the answer to them is yet to come. No man can have been much accustomed to judicial investigations, without having often, in his own experience, found a case proved in a manner which appeared to him to be unanswerable, and which has yet afterwards received a full and satisfactory answer.

At the same time, my lords, it will be my duty on behalf of the Commons, to represent to your lordships, the full force and effect of that evidence which has been produced; to state what, if the case should not be answered, are the crimes which will be established against the noble lord; and what the aggravations with which those crimes are accompanied.

It is my duty, in the present stage of the cause, to state this, not only in justice to those whose commands I have received, but also in justice to the noble lord himself. It is fit, my lords, that the full force and extent of the prosecutor's case should be stated now, while the defendant and his counsel have yet time to answer it; and the great use of a proceeding, such as that in which I am now engaged, is, that the Court may be fully aware of all the evidence which they are to expect the defen-



dant to answer; and that the defendant likewise may be fully apprised what it is that he is required to answer.

My lords, in the discharge of the duty which has been imposed upon me, it will be necessary for me to state many things, which it must be extremely painful to the noble lord, and to those who are most nearly connected with him, to hear. For myself, I can only say, that it is with no feeling of satisfaction that I shall discharge that duty. The Commons, my lords, are engaged in no personal contest; they entertain no private animosity: and when they recollect the power which the noble lord has enjoyed; the splendor in which he has lived; the envied height to which the favour of his sovereign had raised him; and contrast that with his present situation, called upon to answer to his country for offences which deeply involve his character and his reputation: I say when they reflect upon this, it is with no feelings of satisfaction, much less of exultation and of triumph. But, my lords, they are bound not to show favour to the noble lord; they cannot favour him without betraying their constituents; indulgence to him would be treachery to their country.

My lords, we stand in a situation of great responsibility; we are sensible that the managers for the House of Commons; the witnesses who have been examined; nay, every person upon whom it depends, that this trial shall be brought to its just issue; stand at this moment with the eyes of their country fixed upon them, and that we all of us may be said to be in some degree, as well as the noble lord, upon our trial before our country. My lords, we are, as well as your lordships, the ministers of justice. We have a great public duty imposed upon us; a duty second in importance to none but that most solemn and most sacred duty which will devolve upon your lordships, when, the evidence on both sides being closed, you will individually, upon your honour, have to declare whether the defendant is innocent or guilty.

Having stated to your lordships what I conceive to be the nature of the task which has been imposed upon me, I will now proceed to state to your lordships what it is that I propose to do. I shall endeavour, my lords, to explain to your lordships, what are the crimes with which the noble lord stands charged; what the facts by which the Commons conceive that they shall establish those crimes; and what the evidence by which they imagine those facts are proved.

My lords, the crimes imputed by this impeachment to the noble lord, are of two kinds; they are offences against the common law, and a direct breach of a positive act of parliament. The first and the tenth articles of impeachment relate only to offences at the common law: all the other articles comprise in them offences at the common law, and likewise violations of the act of parliament.

My lords, I shall proceed in the order in

which the managers have proceeded with their evidence before your lordships; and I shall take the first and the tenth articles together; and an observation which has very recently fallen from one of the learned counsel for the defendant, makes it necessary for me to observe to your lordships, that the first and the tenth articles are in substance the same, except that the first article charges the noble lord with having declared in the House of Commons, that he would not reveal the application of a large sum of public money in his hands; and that the tenth article does not contain any such charge: in all other respects, the first and the tenth articles are the same. All the evidence which applies to one of them, applies to the other; and, my lords, the sending up to the House of Lords the supplementary article of impeachment,—though I have heard it represented, and from the observation of the learned counsel to-day, I should imagine that he meant to suggest, that it was attended with some circumstance of hardship,—was in fact a proceeding purely of fairness and indulgence to the noble lord.

The first article had charged, that during the treasurership of the defendant, before the act of parliament had passed, he had applied to his own emolument large sums of public money which had come to his hands; and a particular sum of 10,000*l.* was mentioned in that article.

The Commons were in possession of evidence to prove that the noble lord had possessed himself of much larger sums than that sum of 10,000*l.*, and they might unquestionably under the first article have given evidence of all the sums of which they have produced evidence before your lordships; but as they conceived that it was possible that the noble lord and those with whom he advised might have their attention directed, to only one specific sum of 10,000*l.*, and that therefore he might not be so well prepared to defend himself with respect to the other sums, which they meant to charge him with having applied to his own use, they thought it a proceeding only of fairness and of candour to the noble lord, to carry up another article of impeachment, which would particularly draw his attention to all the other sums which they conceived they should be able to prove, that the noble lord had possessed himself of, amounting altogether to the sum of 27,000*l.*

My lords, the offence charged in the first or tenth article then is this: it is that the noble lord, filling a high and public office, and having received an augmentation of his salary upon the express condition that he should not derive any emolument whatever from the public money in his hands, did notwithstanding apply the public money to his own use, and make profit of it.

That is the simple charge contained in the first article. And then the Commons charge, as I have before stated, the noble lord's refusal to answer as to the application which he had



made of the public money. My lords, I apprehend that it hardly can be necessary for me to state to your lordships, that the fact so charged is an offence at the common law, provided it be made out in evidence.

That an officer receiving a salary upon the express condition, that he will not do a certain act, and afterwards doing that act, is guilty of a breach of his duty, as a public officer; and that as such, he is indictable, is a proposition upon which I apprehend that no doubt will be raised in your lordships' minds.

My lords, I shall now proceed to state the facts, and to observe upon the evidence which has been adduced in support of them; but before I do it, perhaps it may be right to observe, that though I am afraid I shall be under the necessity of trespassing for some considerable length upon your lordships' patience, yet it certainly is not my intention to comment upon, or even to state to your lordships, all, or even any great part of the evidence which you have already been now above eight days in receiving. It appears to me, that this cause may be rested upon a very few facts, which lie in a narrow compass; and it will not be necessary for your lordships to follow us in all the calculations that we have made, to trace all the different sums in the manner that they have been traced by witnesses before your lordships; it will by no means be necessary for your lordships to do all this, in order to satisfy your minds that the noble lord is guilty of the offences with which he is charged.

However, my lords, though it was not strictly necessary to produce all the evidence that we have gone into, still that evidence is not, as we conceive, immaterial: we thought it our duty, especially in a case where the party accused has withheld all the information that he was in possession of; where he, a public accountant, has taken care that by himself there should not be produced any evidence whatever, any scrap of paper which could at all tend to elucidate or to explain that respecting which your lordships are to inquire, and upon which you are to decide; I say, that being aware of this, we have thought it our duty to lay before your lordships all the materials that we could upon the subject; to produce all the accounts, all the vouchers and papers that we could obtain, and to supply, to the utmost of our power, that which the defendant has endeavoured entirely to suppress. It is, my lords, however, upon a few facts that I shall, in what I have to address to your lordships, rest the case of the prosecutors.

Notwithstanding so much of your lordships' time has been already occupied, in the narrative which was given to your lordships, it will be necessary for me again, in some degree, to go over the same ground, and to state the facts once more in a connected narrative, so as to make intelligible the observations which I have to offer to your lordships.

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Your lordships recollect, that his majesty was pleased to appoint commissioners to inquire into the public accounts of this kingdom; that these commissioners made certain reports, which were laid before the House of Commons, and upon which the House of Commons came to certain resolutions.

The third report of the commissioners has been read in evidence; and your lordships will find that the commissioners, in inquiring into the conduct of the office of treasurer of the navy, found it a matter of great public inconvenience, that large sums of money were suffered to remain in the hands of that public officer; they represented that, in their report, as being a matter which called for the interposition of the legislature, and they observe, "that where public money is appointed for a service, or a purpose, to arrive at a future time, we are of opinion, the public alone ought to have the custody and use of that money in the mean time, and until the service or purpose calls for its application." I do not trouble your lordships with more of the report; but your lordships see that the commissioners were extremely struck with the inconvenience which either did, or which might, result to the public from the large sums of money, which the treasurers of the navy had in their possession, being applied by them to the purposes of private advantage.

The House of Commons, after this report was laid before them, on the 19th of June, 1782, came to certain resolutions; and your lordships will find that one of the resolutions of that House of Commons, of which the noble defendant was at that time a member, is in these words: "That it is the opinion of the committee (being a committee of the whole House), that from henceforward the paymaster general of his majesty's land forces, and the treasurer of the navy for the time being, shall not apply any sum or sums of money, imprested to them, or either of them, for any purpose of advantage or interest to themselves, either directly or indirectly." His majesty was graciously pleased to act upon this resolution. It was thought advisable by his majesty's ministers, and his majesty was pleased to listen to that advice, to give an augmentation of salary to the treasurer of the Navy, so large as to more than double the salary which he before received, upon an express condition and for the sole purpose, that he should not make any use whatever of the public money: that he should not derive from it any advantage or any emolument whatever.

The treasurer of the Navy at this time was Mr. Barré; and the augmentation of his salary was of the sum of 2,150*l.* a year, making upon the whole a clear salary, as it was then imagined, of 4,000*l.* a year (which your lordships will find not very accurately imagined), in full satisfaction of all wages, fees and other perquisites and emoluments theretofore enjoyed by the treasurer of the Navy: These were the words contained in the warrant un-



der his majesty's sign manual, by which he gave that augmentation of salary to Mr. Barré.

My lords, the country having purchased, at so large a price, from the person who was to execute this important office, that he would not make any advantage whatever of the public money, but keep it entirely reserved for the public and for public services, it might well be expected that the person receiving this consideration would have performed his part of that contract.

My lords, your lordships find that Mr. Barré did faithfully perform it: Mr. Barré made no advantage whatever of the public money in his hands; he continued, however, but for a short time to be the treasurer of the Navy; and in the month of August, in the same year, on the 19th of that month, the noble defendant, then Mr. Dundas, the lord advocate of Scotland, was appointed to that office.

My lords, he was appointed to it exactly in the same manner, and under the same terms, as Mr. Barré had been appointed to it; with the exception, however, that your lordships will find there was a greater increase of salary given to lord Melville, than had been given to Mr. Barré, in order to secure, what it seems had not been perfectly secured before, a clear and complete salary of 4,000*l.* a year, for the execution of the office.

My lords, the warrant under his majesty's sign manual, granting this increase of salary, which does not bear date till the 23rd of October, two months after the noble lord's appointment, gives to him an additional allowance of 2,324*l.* 6*s.* 6*d.* in order to make, together, with the acknowledged salary which he had before, being 1,850*l.*, an income to amount in future to the sum of 4,000*l.*; and "that," his majesty is pleased to say, "We are graciously pleased to grant him, clear of all deductions, in full satisfaction of all wages, and fees, and other profits and emoluments, heretofore enjoyed by former treasurers of our Navy; the same to commence and be computed from the day of the date of our letters patent." And then, that he might be perfectly secure in the enjoyment of this full salary of 4,000*l.* a year, "We do further direct, authorize, and empower him, in case the said additional allowance of 2,323*l.* 6*s.* 6*d.* together with the said several allowances before stated, shall not produce in each year the nett sum of 4,000*l.*; to charge the deficiency, if there be any, in the annual amount of monies disbursed by him for fees of divers natures."

The noble lord was in possession of this salary of 4,000*l.* a year, under this warrant, during the whole time that he filled the office of treasurer of the Navy; and the only question before your lordships is, Whether, having received this upon the express condition which I have stated, he has or has not complied with that condition? I am sure your lordships must see, from this state of the question, that if as one may conjecture may be the case, from some questions that have been put to some of

the witnesses who have been examined before your lordships, if any attempt should be made to draw your lordships into a consideration whether or not the public have sustained any loss, whether any actual disadvantage or inconvenience has been incurred by the use that has been made of the public money; an attempt will be made to divert your attention from that which you are called upon to decide, to something which is wholly indifferent to it.

My lords, it was not a matter that remained for the person who received so very large an increase of salary upon the express terms of not deriving emolument from the public money, to inquire whether the public would sustain any loss or not by it. The inconvenience to the public arising from such a practice, the probable, or the mere possible, consequences only of a treasurer of the Navy being permitted to make use of the public money, were seen to be such, that it was thought, on the part of the public, that a cheap purchase, a most advantageous bargain, would be made by giving so large a portion of the public revenue, as above 2,000*l.* a year, for no consideration whatever, but merely to ensure that the treasurer of the Navy would be careful to abstain from the use of the public money. No additional duty was imposed upon him when his salary was thus more than doubled; he was not called upon to give greater attendance, he was not exposed to a greater degree of responsibility, nothing was added to the duties of his office; all that was required from him was, to abstain from using in any way, the public money that should pass through his hands; and for that alone the public was made to give to him so large a sum, much more than double his former salary.

My lords, it will now be my duty to show your lordships, that notwithstanding the noble lord received this compensation, he wholly forgot the condition that was annexed to it; that receiving this large increase of salary, he yet, as his predecessors who received the lesser salary seem to have done, applied the public money to his own use. My lords, the way in which that charge is proved, has been detailed to your lordships at very considerable length, and I shall content myself with merely stating the facts, and pointing out to your lordships' attention the medium of proof by which they are established. When I use the word *established*, your lordships will always understand me to be using it because the language does not afford me another word more properly to express what I mean; that it is established, if I may so say, *de bene esse*, till the noble lord shall have entered upon his defence, and have proved his case before your lordships.

The noble lord having been appointed, on the 19th of August, to this office, your lordships find that, on the 6th of November, in the same year, a sum of 45,000*l.* was issued to him at the Exchequer, for the service of the Navy; that on the 22nd of the same month, a



further sum of 50,000*l.* was issued to him for the same service; and a further sum, on the 19th of December, in the same year, of 93,830*l.* 6*s.* 8*d.*: Of these three sums, amounting together to 188,830*l.* 6*s.* 8*d.*, your lordships find that no less than 11,000*l.* was intercepted, between the issue from the Exchequer and the vesting the money in the Bank; that of the 45,000*l.* issued on the 6th of November from the Exchequer, only 40,000*l.* was carried to the account of the treasurer of the Navy at the Bank, and that the remaining 5,000*l.* was received, and was diverted to some private purposes. I do not state to your lordships that there is immediate evidence of the whole of that 5,000*l.* being applied to the use of the noble lord, but that it was diverted to some other purpose than those for which the money had been issued at the Exchequer; that of the 50,000*l.* issued on the 22nd of November, only 47,000*l.* was carried to the account of the treasurer of the Navy at the Bank, and 3,000*l.* was paid in the Bank-notes to the person, whoever it was, to whom that money was issued: so, of the 93,000*l.* only 90,000*l.* was carried to the public account, and that 3,000*l.* of it was diverted from the use of the public.

Your lordships have it in proof, that the 5,000*l.* part of the 45,000*l.*, which ought to have been carried immediately to the account of the treasurer of the Navy at the Bank, was paid at the Exchequer, in five Bank-notes, of 1,000*l.* each; that the 3,000*l.* part of the 50,000*l.*, which was not carried to the public account, was paid in three Bank-notes, of 1000*l.* each. We have not been able, my lords to trace the application that has been made of all these notes, or the hands through which they all have passed; but we have proof as to one of the notes, which made up the 5,000*l.*, and as to one of the notes which made up the 3,000*l.* that those identical notes were applied to the immediate use of the noble lord. We have shown, that one of the three notes, of 1,000*l.* each, part of the 50,000*l.*, was, within a few days after it had been issued at the Exchequer, namely, on the 24th of November, 1782, paid into Mr. Drummond's hands, to the use of the noble lord: that 600*l.* part of it, was immediately carried to the credit of his private account with Mr. Drummond, and that the remaining 400*l.* was paid either to him, or to some person immediately sent by him to Mr. Drummond, in small notes amounting together to 380*l.* and 20*l.* in cash.

My lords, I take the liberty of saying, that we have proved that this four hundred pounds was paid immediately to the noble lord, or to some person who was sent by him to the house of Mr. Drummond; because, although the learned counsel did seem, by their questions, to affect to throw some doubt upon that fact yet, with great submission to your lordships, the fact was proved in a manner that does not admit of the least rational doubt. It was proved by the clerk who received the 1,000*l.* note, and who carried the 600*l.* to the account

of Mr. Dundas, and who had paid the four hundred: It was proved by him, that this was not paid in by any person on the account of the noble lord; that there was no memorandum made, as is usual where persons pay money in to the account of another person who keeps cash with his banker; that there was no receipt given, and no memorandum made, but that the entry was made exactly in the same way as it would have been, if the noble lord had himself gone to the shop of Mr. Drummond, and had there, with his own hand, paid in the 1,000*l.* note, and had had 600*l.* carried to the credit of his account, and received the rest in the way I have stated. It is not possible to suggest any mode in which this could have been paid in by any other person, unless your lordships will imagine a case, of which it is not sufficiently strong to say, that it is extremely improbable; one really must say, that, in the common occurrences of mankind, it was impossible. Unless this money was immediately paid by Mr. Dundas himself, or by some person who acted merely as a messenger in carrying the note to the house of Mr. Drummond, and receiving the change of it, after having had part carried to the account of Mr. Dundas; unless your lordships believe this, you must imagine that some man carried money to Mr. Drummond's to be paid in to the account of Mr. Dundas, and was not only desirous never to have any credit for it himself, but was studious to have entirely obliterated all traces of his ever having made such a payment. I say, that of such a case it is not sufficient to state that it is most improbable, it is one that never can have happened.

My lords, I do not trouble your lordships with pointing out in detail the manner in which we have identified that very note; we have done it by entries in different books. In the first place, an entry made by the clerk at the Bank, who issued it at the Exchequer; then the entry made by a clerk of Messrs. Drummond; then by the production of the note itself; and the examination of the witness from the Bank, who proved that there are never issued by the Bank two notes for the same sum, having the same number and the same letter. I do not trouble your lordships to go through the whole of that detail, to which your lordships gave so patient an attention that I am sure it must be in your recollection.

My lords, we then prove, that one of the notes in which part of the 45,000*l.* was paid, on the 6th of November, one of those identical notes was paid into the house of Moffatt, Kensington, and company, bankers in the city of London, in discharge of a bill of exchange, drawn upon lord Melville by a person of the name of Newbigging: We have therefore shown distinctly, that these two sums of 1,000*l.* each, part of the public money imprested to the treasurer of the Navy for public purposes, were diverted by him to his own immediate use, and that he made profit and emolument



of them. One was applied to the discharge of a negotiable security, carrying interest; and the other was applied to increase the noble lord's balance at the house of Drummonds, who, it is proved, charged their customers with interest upon sums in which they had overdrawn their account.

My lords, I ought perhaps, at this moment, however, to make some observations upon the nature of the evidence by which these facts have been proved. With respect to the sums issued from the Exchequer, and the sums paid into the account of the treasurer of the navy at the Bank, there was great objection made on the part of the defendant. His counsel were pleased to object to receiving those public books in evidence before your lordships. My lords, there could not, I apprehend, be much doubt entertained, at any time, of those books being evidence; that they were evidence against every body, but particularly that they must be evidence against the noble lord himself: they are his own public books, the books from which his own accounts, those accounts which have been settled by him, were made up: and yet even that evidence,---so strong a desire has there been manifested on the part of the defendant, in every stage of this proceeding, to exclude all information from your lordships, and from the public,---even that evidence was objected to on the part of the defendant. My lords, I am aware that we shall, perhaps, be told hereafter, as your lordships have already once been told, that this was the objection, not of the noble lord himself, but of his counsel, and an objection made contrary to his most earnest intreaties;---one of those objections, of which we are to understand, it seems, that the noble lord is a most impatient and reluctant, though he is at the same time a silent and an acquiescing auditor. My lords, that is indeed a most convenient species of defence, which in the present cause is, for the first time, to be set up,---that the parts of the defence are to be cast, as it were, between the noble defendant himself and his counsel: a most convenient one indeed it would be, if it could possibly meet with success, that the noble lord should claim the splendid advantage of seeming to court inquiry, and of being desirous to have his conduct most fully scrutinised into, and should at the same time secure to himself the solid benefit of every little formal objection, which the ingenuity of his counsel can suggest.

My lords, another head of evidence to which objections have been made (not indeed to its competency, but to the credit which it deserves, and upon which the facts which I have stated to your lordships altogether depend), requires also some observation. The learned counsel have contented themselves, in the cross-examination of witnesses who were produced to speak of transactions of which they had made memorandums at the time in the books which were produced before

your lordships, with asking them if they had any recollection whatever of the transaction, but from the entries which they had made; and upon receiving an answer, as they generally did, and as they necessarily must do, that the witness had no other recollection of it, the learned counsel seemed to be extremely well satisfied. Now, if we are to understand by this, that it is the intention of the counsel for the defendant to state to your lordships, that the evidence so given is not full, complete evidence to establish the facts which we have proved, I will venture to say, that one of the most dangerous attempts that ever was made in any court of justice, will be made before your lordships upon the occasion of this trial. My lords, how is it possible that the clerks in a banking house, or in any public office, who make perhaps, four or five hundred payments in a day, can have any recollection of a payment, but from the entries which they have made? My lords, the rules of law and the rules of common sense are not so much at variance, as the learned counsel must persuade your lordships they are, if they can successfully take from the effect of this evidence. I will venture to say, that the evidence would have been much less deserving of credit if the witnesses had affected to recollect transactions which passed so many years ago, and which are involved in the multiplicity of business in which they are engaged. There is not a case occurs, either a civil or a criminal case, in which it is necessary to trace payments through bankers, to follow drafts, to pursue securities, which have been forged, and trace them back to the original contriver of the fraud, or the original author of the forgery, in which it would be possible to convict in a criminal case, or to do justice between the parties in a civil case, if such a doctrine, as the counsel have more than hinted to us that they will endeavour to establish, were to receive the least countenance from your lordships. My lords, consider to what extent this must go: if your lordships are to give countenance to this objection, it will be hardly possible ever to prove any deed which has been executed; because the persons attesting deeds, the clerks of attorneys, or other persons whose professions call them to attest deeds, usually attest such a number that they cannot recollect the execution of any one particular deed, except by seeing the attestation which they have signed. But it is so well established that this is legal and sufficient evidence, that there has been a case decided in which it has been stated in what way that species of evidence is to be given: I allude to a case to be found in the third volume of those reports which commonly go by the name of the Term Reports, the case of *Doe v. Perkins*;\* in which, after great consideration, it was decided, not that a witness may speak from an entry which he

\* 3 T. R. 749.



made at the time, having no other recollection of the transaction, because that was a matter which admitted not of the least doubt; but in which it was decided, that in such a case where the person has no recollection of a transaction but from an entry he has made in a book, the original book, containing that entry, must be produced: whereas, if he had any recollection of the transaction independent of that entry, the original need not be produced. It would be wasting your lordships' time to take up any more of it in observing upon that part of the evidence.

My lords, we have proved to your lordships these two sums, amounting together to 2,000*l.* of the public money, appropriated by the noble lord to his own use, within a few months after he had been appointed to the office. Your lordships will recollect, it was impossible that those sums could have been received for the salary of the noble lord. In the first place, his salary would not have amounted to near so much within the period of time within which this happened. In the next place, from the noble lord's accounts at Messieurs Drummonds, which have been produced, your lordships find that Mr. Douglas had made other payments to the noble lord on account of his salary before this transaction took place; it is impossible, therefore, in that way to account for it.

Now, my lords, it is certainly not in the power of the Commons to show your lordships, in the same direct, and, using the expression with the reserve which I have before stated to your lordships, in the same unanswerable way that the remainder of the 27,000*l.* of public money, which is stated in the tenth article, was applied to the use of the noble lord.—And your lordships will not understand me to be speaking of 27,000*l.* as being taken at any one time; for there never was 27,000*l.*, or more than 23,000*l.* of the public money at any one time, during the first treasurership applied to private purposes.—It will not, I say, be in our power to prove, as directly and as distinctly as we have done with respect to the two sums of 1,000*l.* each, the employment of the rest of the money for the use of the noble lord; but we shall show your lordships that the other sums of which we have given evidence, instead of being where they ought to have been, in the Bank, were, by the permission, and by the means of the noble lord, in private hands.

My lords, we have shown your lordships, that on the 30th of April, in the year 1783;—April, 1783, being the month in which the noble lord quitted his first treasurership;—we have shown by proving what were the treasurer of the navy's official balances on that day, and by showing what the balance in the Bank was on that day: that 23,000*l.* of the money which had been issued by the Exchequer for naval service, was not in the Bank, applicable to any naval services. The official balances on that day were 89,408*l.* 12*s.*

3*d.*—The Bank balances from the treasurer of the navy's banking-book were 66,408*l.* 12*s.* 3*d.* leaving a deficiency of 23,000*l.*; or if it be more grateful to the ears of the learned counsel for the defendant, a *difference* of 23,000*l.* My lords, that 23,000*l.* was reduced by payments, which were made in the months of June and July,—payments made into the Bank on account of the treasurer of the navy, to the sum of 7,600*l.* On the 24th of June, a sum of a thousand pounds was paid by some private individual into the Bank, to the account of the treasurer of the navy.—In the month of July, two sums, one of 5,000*l.* and another of 6,000*l.* were paid into the Bank to the account of the treasurer of the navy; and we have proved that they were paid by Messieurs Mure and Atkinson, by drafts upon Smith, Payne and Smith; and that those drafts were paid by Bank-notes, which Bank-notes were carried into the Bank to the account of the treasurer of the navy.

My lords, we have proved the same thing with respect to a sum of 2,000*l.* paid on the 31st of July also, by Mure and Atkinson, to the account of the treasurer of the navy. We have therefore shown, that 13,000*l.* was, in the month of July only, paid by Messrs. Mure and Atkinson, to the account of the treasurer of the navy at the Bank.—These sums, together with the sum of 1,400*l.* amount to 15,400*l.*; that 15,400*l.* being deducted from the 23,000*l.* the deficiency in the month of April, 1783, leaves a balance of 7,600*l.* due from the treasurer of the navy;—a deficiency, or a difference, of 7,600*l.* between his official balance, that is, the balance which he ought to have had, considering what sums had been issued to him for the public service, and the Bank balance, that is, the sum which he actually had at the Bank, applicable to such a service.

My lords, it can hardly be necessary to observe to your lordships, that all these sums having been paid to the account of the treasurer of the navy, by the hands of private individuals, coming from the houses of private individuals, must have been diverted from public purposes to those of private individuals; certainly it is not in our power (and your lordships unquestionably will not require us), to prove the actual advantage, the exact amount of the interest, or the profit which was made by the noble lord from all those large sums which were so placed in the hands of private individuals; it is sufficient that we have shown distinctly as to part of the public money, that the noble lord immediately received the advantage which was derived from it; and it is for him to show that those sums, so in the hands of private individuals, were there without his deriving any benefit or emolument from them. The burthen unquestionably lies upon him, when we have shown that this money, which ought to have come to the treasurer of the navy only for public services, came from those private individuals:



it is for him to show that he made no advantage of it. However, it is not necessary even that your lordships should presume he had made a private advantage of it; because the extent to which this has been done, to what degree the noble lord has been criminal, may be a matter indeed, which may at some future time enter into your lordships' consideration; but the only question now is, whether the noble lord is, or is not, guilty of a breach of duty; and if we have proved it to the extent of 2,000*l.* we have proved all that is necessary; if we have proved that he made one shilling advantage of public money, after he had received the additional 2,000*l.* a year, upon express condition that he would not make an advantage of it; if we have done that, we have established the charge we prefer against the noble lord.

My lords, I will now proceed to state to your lordships the manner in which the 7,600*l.*—the balance remaining due after those large sums had been paid in by the house of Mure and Atkinson, and the other private houses which had paid it into the account of the treasurer of the navy,—was reduced to the sum of 1,600*l.* The noble lord was re-appointed to the office of treasurer of the navy on the 2nd of January, 1784. The balance remained against him of 7,600*l.* from the month of July 1783, till the month of January, 1784, when he was re-appointed. The re-appointment of the noble lord to that office enabled him, with the public money, to discharge the balance which was then remaining against him; and your lordships will find that what was done within two months after he was appointed, namely, in the month of March 1784, was to pay indeed a part of the balance remaining due from him upon his ex-treasurership account, but to pay it with the public money imprested to him upon his new treasurership account; it was done by a transfer of the sum of 2,000*l.* from the new account to the old account; upon the 24th of April, by a farther transfer of 1,000*l.* from the new account to the old account; on the 30th of April, a farther transfer of 1,000*l.*; on the 17th of June, a farther transfer of 1,500*l.*; and on the 30th of June, another transfer of 1,500*l.*; making altogether 7,000*l.*\* transferred by the noble lord from his new treasurership account to liquidate, in part, the balance due from him on his old account:—A transfer of the public money imprested to him for the services of the navy only, to the discharge of a debt due from him-

\* This account of the transfers is wholly incorrect, and indeed is not consistent with the subsequent statement of the learned manager that they amounted only to 6,000*l.* whereby the balance on the old account was reduced from 7,600*l.* to 1,600*l.* The errors will be immediately detected by a reference to the entries in the treasurer's Bank books as given in evidence, p. 873.

self upon his former account to the public. My lords, it is in proof before your lordships, that such a transfer from the new treasurership account to the old one, cannot properly be made but upon an application to the navy board, and an order made by them for the purpose. Your lordships find that in no one of the instances which I have mentioned, was there any such application made, or any such order obtained.

By these means, the balance of the noble lord was reduced from 7,600*l.* to 1,600*l.* and accordingly your lordships will find, that by the balances which have been stated on the 31st of March, 1785, the official balance was 2,608*l.* 12*s.* 3*d.* the Bank balance 1,008*l.* 12*s.* 3*d.* leaving exactly the difference of 1,600*l.* And it may be proper here to observe to your lordships, that the balance of 7,600*l.* which was remaining due upon the ex-treasurership account, and which was liquidated only in the manner I have stated, must be considered as in fact remaining in the hands of the noble lord, from the time when his ex-treasurership expired, to the moment when he quitted his new treasurership, in the month of May, 1800; because your lordships will find that there never was a period of time between his entering into his office in January, 1784, to the time of his quitting it, when the difference between his official balance and Bank balance upon his public account, the Chest account, of which your lordships have heard so much, and upon which I shall have occasion to observe when we come to the other charges, your lordships will find that at no one time was the balance so little as 7,600*l.*: the noble lord therefore had, during the whole of the time, the eighteen years that he filled the office, this sum of 7,600*l.* of the public money in his hands.

My lords, it is now necessary to bring back to your lordships' recollection, the evidence which was given by Mr. Swaffield with respect to two sums; and I should state to your lordships, that of the 7,600*l.* there being 1,600*l.* appearing by the difference in the balances,—the official balance and the Bank balance of the old account remaining due from lord Melville, the difference upon the new account was exactly 6,000*l.*; so that it was in fact merely a transfer of part of the debt from the new account to the old account.

Soon after these transfers were made, the last being in June, 1784; in the month of August, in the same year, your lordships find a draft drawn by the paymaster;—for the treasurer of the navy drew no drafts, but drawn, in the same way as all public drafts were drawn, by the paymaster;—your lordships find a draft for 2,000*l.* upon the Bank, payable to Mr. Swaffield, but that money was never received by Mr. Swaffield, and never applied to any public purposes whatever. There was afterwards, in the month of May, 1785, another sum of 2,000*l.* paid by a draft drawn to Mr. Swaffield exactly under the same



circumstances. These two sums being added to the 6,000*l.* deficiency upon the new treasurership account, make 10,000*l.* deficiency upon that account; and your lordships will find 1,000*l.* paid into the Bank on account of the treasurer of the navy on his new account, by a gentleman of the name of Davis, a clerk in the office, who had received that sum of 1,000*l.* on account of lord Melville's salary. That sum so paid, was consequently received from a private source: you find by that means, the balance upon the new account was reduced to 9,000*l.* and accordingly comparing the official balance with the Bank balances, upon the 31st of October, 1785, we find the deficiency was 9,000*l.*;—146,059*l.* 17*s.* 8*d.* being, according to the books, the official balance, and 137,059*l.* 17*s.* 8*d.* being the Bank balance, leaving a deficiency of exactly 9,000*l.* On the 30th of November, the following month, although each balance had varied in its amount (the official and Bank balances), yet the result was exactly the same; there was still remaining a deficiency of 9,000*l.* and this was the state of the accounts at the time of the death of Mr. Douglas, the first paymaster of lord Melville.—Mr. Douglas died, your lordships recollect, in December, 1785, and Mr. Trotter was appointed in January, 1786.

My lords, upon Mr. Trotter's appointment he had transferred to him the balance remaining in the paymaster, Mr. Douglas's hand, the small balance which arose from the exchequer fees; for your lordships recollect, that all the money which passes through the hands of the paymaster, is appropriated to particular services, and is paid over by the paymaster to the different sub-accountants, the cashiers of the different boards, except the small sum, comparatively small, which is appropriated to the payment of the exchequer fees, and that alone remained in the hands of the paymaster. The balance that was remaining on account of exchequer fees, was, upon the death of Mr. Douglas, transferred by his executor to Mr. Trotter, the new paymaster.

But at this time there never was a balance of any kind in the hands of the paymaster himself; every thing remained at the Bank, except the sums of money which lord Melville had himself withdrawn, amounting to 1,600*l.* upon the old account, and to 9,000*l.* upon the new account.

My lords, Mr. Trotter has told your lordships, that, upon entering into his office, he examined the public books, and that he saw those two balances remaining. He has likewise told your lordships, that lord Melville himself informed him, that, besides the balances in the Bank, and in the hands of the sub-accountants, there was a sum of 10,600*l.* of the public money which he, lord Melville, was to account for; a sum of money acknowledged by lord Melville at that time to be in his hands, or to be in the hands of persons for whom he was to account.

My lords, there might perhaps seem to be something wanting in our evidence, if we had not gone on to show, as we have done, that by these deficiencies Mr. Douglas could not be at all affected. Mr. Douglas's accounts were passed. You have it in evidence, that no demand was ever made upon his executor for any sum, except this small balance remaining of exchequer fees; and his executor has told your lordships, that though Mr. Douglas has been dead twenty years, no demand has been made upon him; and therefore none of those deficiencies could be accounted for, on the supposition that Mr. Douglas had thought fit to apply to his own use any part of the public money.

My lords, it could hardly be necessary, after what I have stated, to trouble you with any thing more upon this part of the case. The acknowledgement made by lord Melville, that he had so large a sum as 10,600*l.* of public money in his hand, coupled with the circumstances which I have already stated, are decisive evidence upon this part of the case; decisive evidence that the noble lord had applied to his own private use, that public money which he had expressly stipulated not so to use, and which he was largely paid for not so using. However, my lords, there is some other evidence which it is necessary that I should state to your lordships, and on which I must observe, that though it is evidence upon this part of the case, it is charged by the Commons as being of itself a crime in the noble lord. I mean, my lords, the admission made by the noble lord, in the House of Commons, that he had of public money 10,000*l.* in his hands; and that he never would, for the reasons which have been stated to your lordships by the honourable manager who gave evidence of that part of the noble lord's speech, reveal them, that he never would reveal them, for reasons of public duty, private honour, and personal convenience. My lords, what the sum of 10,000*l.*, to which the noble lord alluded in that declaration, was, we are totally at a loss to guess. In the sums which I have stated to your lordships, in the deductions which I have made of the various balances which were from time to time in the noble lord's hands, we do not find any specific sum of 10,000*l.* to which we can apply his observations. We find, indeed, at the end, that upon the balance of the two accounts there was the sum of 10,600*l.* due; but as to any one specific sum of 10,000*l.* so applied, we are at a loss to guess to what it is the noble lord alluded. We are however at least to understand, that there was only a sum of 10,000*l.* which had been applied by him to some public purpose, which he would not divulge.

My lords, the commons conceive, that the declaration by a public officer, a public accountant, intrusted with public money for certain specific purposes, that he has used that money for other purposes than those to



which they were appropriated by the public, and that he will not disclose what those purposes are; we conceive that such a declaration, on his part, is of itself a flagrant violation of the law and the constitution of the country. My lords, is a public accountant to say to the public, that he has used their money indeed, and that he has used it for some purpose or other in which they are deeply interested, but what the application of it was he will not tell them? Was he authorized by the public, whose servant he was, to make such an application of their money? Was he authorized by his majesty to make it? Was he authorized by any usage that could be found in his office? Had it been customary for the treasurers of the navy, in times past, to apply the money which was appropriated for certain specific purposes, which was imprested to them expressly for navy services? was it the habit of office? had there been any thing like a usage prevailing before his time, under which he could justify such an application of public money? My lords, nothing of that kind appears before your lordships, but the noble lord satisfies himself with boldly saying, that he has diverted this money to other purposes. What those purposes are he never will reveal; and this in a country in which it has been always thought, that one of the most important safe-guards of our liberties is, that no public money should be in the hands of any public minister, but for known and ascertained purposes; in which it has always been imagined that the preservation of our liberties depended upon the government not having the disposal of the public money for any other purposes than those for which it was voted.

It is true that under certain circumstances, the constitution has entrusted the ministers with the use of public money, without their rendering any account of the application which has been made of it: but your lordships will recollect, under what guards it is that the ministry are entrusted with the secret service money; it is that they shall state under the sacred obligation of an oath, that it has been applied for such purposes as it was destined for, when placed in their hands. And will your lordships endure that all these precautions shall be put an end to at once, by a public minister, of his own authority, acting under no such sanction? and that it shall merely rest afterwards upon his assertion that he has used the money for public purposes?

Will your lordships allow him to have the control and disposal of the enormous sums that may be passing through his hands? and your lordships will recollect to what an extent this must go. His counsel have thought it expedient to state, that while in this situation, no less a sum than one hundred and forty millions of public money passed through the defendant's hands. What, is such an engine to be placed in the hands of any minister? Is he to have the disposal of money to so enormous an amount, and shall it be suffi-

cient afterwards, when he is called to an account, for him to state, that he has used it for public purposes; but that he, setting up his own conscience and his own reason as arbiter and judge for himself, will never say to what purpose it was applied?

He has not gone even so far as to allege that it was beneficially applied, but merely that it has been applied to public purposes. I do not say whether the noble lord's character may not set him above such an imputation; but it might be applied for purposes, public indeed, but most pernicious. It might be applied for the subversion of the liberties of the people. The noble lord does not condescend to tell us that he has applied this to purposes from which the public have derived the smallest benefit. I have, says he, applied it for public purposes; what those purposes are I will not disclose. I will not disclose it to you, my country, who call upon me to say what the use of that money was. I will not disclose it now,—I never will disclose it.—And where is it that the noble lord thinks it proper to offer this bold defiance to the law and constitution of his country? It is in the midst of the representatives of the people. It is in the very sanctuary of liberty that the noble lord ventures to maintain a proposition, so bold and so daring as this. At least, one should imagine, before such a proposition was hazarded, that the noble lord was prepared to show, that he never had derived any benefit himself from the money; that he was prepared to show, from his own private papers, from the documents which you would suppose a person, who puts himself in such a perilous situation, would be at all times ready to produce, that this money was never applied to any private purposes of his own. No, before he makes this declaration in the House of Commons, he takes care to destroy every vestige of evidence relating to it: he takes care that there should be no power of tracing, whether any part of the money had been applied to his own private use; whether that assertion of his could in any part be contradicted; and, to add to all this, the noble lord, when called upon before the commissioners of public accounts, to state in what manner this had been applied, chooses to couple this species of magnanimous defence, this assertion respecting his public duty, with a declaration, that he will not, because he may criminate himself, give any answer to the charge: He chooses, resplendent with the glory of this defence, to crouch and shelter himself under the clause of an act of parliament, which enables persons, if they think it advisable so to do, to withhold information of great importance to the public, because it may possibly bring them to answer at the bar of some court of justice for their crimes.

And, my lords, at the very time when he does this, he is himself a public minister, holding a high office under his majesty. I think, at the time when this examination took



place, the noble lord was first lord of the admiralty. My lords, the Commons submit to your lordships, that if your lordships can give the least sanction to a conduct so outrageous, so in defiance of all laws, and so repugnant to the spirit and the principles of our constitution as this is, there is an end, at once, to all the security which we, and which our ancestors, have hitherto thought we had for the liberties we enjoy.

My lords, I shall not occupy any more of your lordships' time upon this first charge, by which I mean that comprised in the first and tenth articles. I shall now proceed to the other charges, which the Commons have brought against the noble lord. And, my lords, all the charges comprised in the remaining articles, relate to the facts which took place subsequent to passing the act of 1786. And I shall not take up your lordships' time with stating, minutely, all the several articles; but shall content myself with merely apprising your lordships, what are the different species of crimes with which we charge the noble lord. We accuse him of having, in violation of the act of parliament (which act I shall have occasion to state presently), suffered money to be drawn out of the Bank, not for public services, but for the private emolument of his paymaster, Mr. Trotter. We then charge the noble lord with having himself participated, or rather derived emolument, from the money so transferred from the Bank into the hands of private bankers.

The first of these offences is merely an offence under the act of parliament; the second, that of the noble lord having himself derived profit from the money which was so transferred to his account at a private banker's, is, as we conceive, both a violation of the act, and an offence at common law; because the noble lord, subsequent to the act as well as before, received the same salary of 4,000*l.* a year, and received it upon the same conditions, and for the same purposes.

We then accuse the noble lord of having derived emolument, from the permission which he gave to his paymaster to transfer the money to a private banker's, and to make advantage of it. We charge him with having derived emolument from it, by receiving the services of Mr. Trotter as his agent, during the time he so acted, gratuitously and without paying him any consideration for them. And we charge, as an aggravation of the other crimes, and as a crime in itself, that the noble lord destroyed all the papers and evidence upon the subject which were in his possession.

My lords, I have stated to your lordships, that, in the month of January, 1786, Mr. Trotter was appointed the paymaster of lord Melville. Whether it was from the suggestions of Mr. Trotter, or not, is of very little importance, but lord Melville took the lead in the act which was passed for regulating the office of treasurer of the navy, and it certainly had the appear-

ance of being something extremely advantageous and auspicious for the public, that the person who at that time filled the office, took the lead, and was most active and most instrumental in passing a law for the reform and regulation of his own office.

Your lordships find, by an entry which has been read from the Journals, that a report was made by the commissioners, which is called the Eighth Report, which drew again the attention of the legislature to the office of treasurer of the navy, and to the regulations which it might be proper to make in it. In a passage in that Report, which was presented to the House of Commons on the 23rd of January, 1785, the commissioners of public accounts say, "The examination which has taken place, has enabled us to form an opinion upon another point of importance to the public. The legislature have, in the last session of parliament, introduced into the office of paymaster of the forces, a regulation, which, as it seems to us, may be applied as beneficially to the office of the treasurer of the navy. The custody of the cash applicable to the navy services, may be transferred from the treasurer to the Bank of England, and the account only of the receipts and payments to be kept in his office: all the sums now received by him, may be received by the Bank: sums from the Exchequer may be imprested into the Bank; all bills assigned upon him for payment, may be paid, and all extra payments may be made by his drafts upon the Bank. The payment of the seamen, the artificers, and labourers in the yards, and the persons in the hospital ships on the half-pay, must be carried on in the same manner it is now; these men cannot be paid by drafts, they must have cash, and with that cash the pay clerks must be intrusted as they are at present, and the treasurer must continue to be responsible for them, as for officers of his appointment, and under his control; but this will be no obstruction to the regulation, the money may be all issued to the pay clerks, by the drafts of the treasurer upon the Bank, according to the requisitions of the navy board, in like manner as many of the sums are issued at this day. Upon the death or resignation of a treasurer, the balances of his cash in the Bank, and in the hands of his pay clerks, must be struck immediately, and carried over to the account of his successor. In this situation, the treasurer neither receiving nor paying public money, can be neither debtor to, nor creditor of, the public, except as far as he may be responsible for his clerks."\*

This recommendation of the commissioners of public accounts, was taken into the serious consideration of the House of Commons; and your lordships observe, that the whole object of it was—and it may be extremely material,

\* Eighth Report of Commissioners for examining, taking, and stating the public accounts. 4to edit. vol. ii. p. 3.



when we consider the construction which will be attempted to be put upon the act that afterwards passed, to remember the terms of this Report, which was the foundation upon which the legislature proceeded in its subsequent provisions—the whole object of the commissioners of accounts was, to leave nothing under the power of private individuals; to have the whole of the money vested in the Bank, in the name of the paymaster and in the names of the sub-accountants, and to be there till the moment it was paid out to the public creditors, in discharge of demands upon the treasurer. This it is which the public had purchased before, by the large salary I mentioned to your lordships; and they thought that what they had endeavoured to prevent, by that large salary, would be rendered impossible, if proper provisions were made by parliament.

On taking this into consideration, leave was given to bring in a bill for regulating the office of treasurer of his majesty's navy; and among the persons directed to bring in the bill, is Mr. Dundas, then treasurer of the navy. Accordingly Mr. Dundas presents that bill to the House, and the bill having passed the House of Commons, he is directed by the Commons to carry it to the House of Lords; it is carried there, receives the assent of the Lords, and afterwards the assent of his Majesty; and it will be necessary for me to state to your lordships what the provisions of that act of parliament are. The act begins by reciting, that it appears by those reports of the commissioners, that regulations were necessary for better conducting the business in the department of the treasurer of his majesty's navy, and therefore it is enacted, "That from and after the 1st of July, 1785, the treasurer of the navy for the time being, in all memorials to be by him presented to the Treasury for money for navy services, shall pray that such sum as he requires may be issued to the governor and company of the Bank of England on his account, and shall transmit with each memorial a copy of the letter, or letters, from the commissioners of the Navy, Victualling, and Sick and Hurt boards, directing him to apply for such sum or sums; in which letter or letters the said commissioners shall, and they are hereby required and directed to, specify for what particular service or services the said money is wanted; and shall also state the balances then in the hands of the treasurer of the navy, under each head of service respectively. And the commissioners of his majesty's Treasury, for the time being, by their letter, from time to time, shall direct the auditor of the Exchequer to issue to the governor and company of the Bank of England, on account of the treasurer of his majesty's navy, naming such treasurer, for the time being, the sum for which such letter shall be drawn upon the unsatisfied order at the Exchequer, in favour of the said treasurer; for which the receipt of the cashier or cashiers

of the said governor and company shall be a sufficient discharge: and all sums for which letters of the commissioners of his majesty's Treasury shall be drawn, shall be issued to the governor and company of the Bank of England in like manner as they have been heretofore issued to the treasurer of his majesty's navy; and all such monies to be issued to the governor and company of the Bank of England, shall be placed on an account or accounts to be raised in the books of the governor and company of the Bank of England, and to be entitled, The account of the treasurer of his majesty's navy, inserting the name of such treasurer for the time being, for the Pay branch, Cashiers' branch, and the Victualling branch."

Your lordships observe, that the act directs, "That an account shall be opened in the Bank, in which there shall be specified all those various branches, and that the sums which are appropriated to the particular uses shall be carried to those separate accounts; and on receipt of all such monies at the Exchequer, the treasurer of the navy shall immediately certify to the commissioners of the navy, an account of the whole receipt, under the respective heads of service; and shall also certify to the commissioners of the Victualling and Sick and Hurt boards, the particular sums received, and applicable to those services respectively."

The third section enacts—"That no money, for the service of the navy, shall be issued from his majesty's Exchequer to the treasurer of the navy, or shall be placed, or directed to be placed, in his hands or possession, but the same shall be issued and directed to be paid to the governor and company of the Bank of England."

And your lordships will find, in the 11th section of the act—so anxious was the legislature to take care that no money should on any account go out of the Bank that had been imprested to the treasurer of the navy for public services—that it was thought necessary to specify, that the treasurer of the navy might, notwithstanding the former provisions of the act, issue money to the several pay clerks at the out ports, that money, which it was known by the constitution of the office was absolutely and essentially necessary to be in the hands of the different clerks at the out ports, where seamen's wages were to be paid. So effectually had the act secured that no money should go out of the Bank into private hands, that it was thought necessary expressly to state, that the treasurer of the navy might issue pay money to the several clerks of the out ports.

My lords, this statute having passed; this statute which was to make so important an alteration in the regulations of this office; which was to give the public such security for the application of public money; to provide against that from which so much danger was apprehended, and so much risk it was known



might be incurred: the object was thought, by the public, to be most effectually secured. They thought themselves secure not only because the provisions of the statute had been so carefully framed, but because they knew that the author and framer of the statute himself filled the office, which was to be regulated and reformed. They saw, with satisfaction, that the reformer was governing and directing his own reform; that they had to trust, not to the dead letter of a statute, which might be forgotten in the book in which it was inclosed, but to the living spirit of the law, in the legislator, who was himself giving direction and effect to his own provisions. But, my lords, how wretchedly have the expectations which the public conceived of him been disappointed! A few months only had passed, after the act had received the royal assent, when a proposition was made to him on the part of the paymaster, to transfer, to any extent that he should think proper, the money which was invested in the Bank, to answer public services, into the hand of some private banker, where he might immediately draw it out for any purposes that he should think proper; and that proposal receives the immediate assent of the author of this law, he who had provided all these regulations.

My lords, this is immediately acted upon; and your lordships find the balances, which had been remaining at the Bank to that time, are immediately transferred to Mr. Coutts: in Mr. Coutts's hands, they remain but a very short time indeed; it is only a vehicle for transferring them into the private hands in which the paymaster thinks proper to vest them, for the private emolument which he is to make of them.

Your lordships will recollect the evidence which has been given upon this subject: that, after these sums had been so withdrawn from the Bank, the money in Mr. Trotter's hands, the differences or the deficiencies between the official balance and the Bank balance, amounted, at first (when this gentleman did not seem to venture to carry to its whole extent the project he had formed), to only about fifty or sixty thousand pounds; that it so continued for some years: but becoming bolder and more adventurous, your lordships find the balance rising to the sum of 100,000*l.*—200,000*l.*, to 300,000*l.*, to 350,000*l.*; and, in the last year in which Mr. Trotter was the paymaster of lord Melville, at the time when lord Melville quitted his office, and when it was necessary to make up the public accounts, Mr. Trotter, the paymaster, had in his hands, of public money, little less than half a million, above 450,000*l.* At the same time, your lordships will recollect what are proved to have been the balances remaining in Mr. Coutts's hands, upon Mr. Trotter's account, during all this time: this money was transferred to that place, it seems, in order that it might more readily answer the public demands; and yet your lordships find, that at the time when Mr.

Trotter has 209,000*l.* of public money transferred by him to Mr. Coutts's, he has left in Mr. Coutts's hands only 47,000*l.* That, at another time, in February, 1796, after he had transferred 216,000*l.* of the public money to Mr. Coutts's, he had not one shilling of public money in Mr. Coutts's hands; nay, he had overdrawn his account, and he was debtor to Mr. Coutts in the sum of 330*l.* I will not fatigue your lordships with going through all these balances, which have been stated to your lordships; but you find, in successive years, in which these enormous sums have been drawn out of the Bank, for the purpose of being more readily applied to the public creditors, that not one shilling of them remained in the place in which they had been deposited under this specious pretext; but that the whole had been applied to private purposes, lent on private securities to individuals, or upon government paper, or embarked in the funds:—that the whole had been drawn out, and nothing left at Mr. Coutts's to answer the public demands.

My lords, if we are to conjecture from some of the questions put by the learned gentlemen, upon their cross-examination of Mr. Trotter, the defence to be set up with respect to this is, that the noble lord had no knowledge whatever of any of these transactions; that he was a total stranger to them; that he had entrusted every thing to Mr. Trotter, his paymaster; that Mr. Trotter was unfaithful in the discharge of his duty: but that for his default lord Melville ought not to answer, because he was a total stranger to it.

My lords, can this defence agree with another part of the defence, which the learned gentlemen have to set up, the extreme attention and care of lord Melville to all the concerns of the public? How these two defences are to be made consistent, I shall leave to the learned counsel to reconcile when they have to address your lordships. But before they enter upon the task of reconciling them, I would ask your lordships whether it is to be endured, that a public accountant, a public trustee, receiving a salary to a very great amount for no duty whatever that he is to discharge, but the superintendence of the officer under him:—for it is proved that the treasurer of the navy had no duties himself to discharge; he had nothing to receive; he had nothing to pay; he could incur no responsibility whatever; he was only called upon to see that the law was executed by those who were under him; he had no duty whatever but to superintend the conduct of his paymaster; it was for that alone that he received his salary from the public;—and yet the defence which is to be set up upon this occasion it seems is, that he had totally neglected that which was his only duty, that having nothing to do but to superintend the paymaster, he left the paymaster entirely to superintend himself, and to conduct the public affairs just as he might think proper.



However, my lords, it may be proper to make another observation upon this species of defence which your lordships have heard, respecting the vigilance and attention of lord Melville to the affairs of the public. I shall have presently to point out to your lordships the advantages which resulted from them; you have them in your recollection, and I may indeed as well observe upon them now. Your lordships have in your recollection the large sums of public money,—whether with the knowledge of the noble lord or not is a matter of subsequent consideration;—but the large sums of public money, which were actually applied for the benefit of the noble lord by Mr. Trotter, applied under this negligence, this inattention, of the noble lord to the duties of the office; the India stock actually purchased with the public money; the loyalty loan paid for with the public money, and transferred to the public account; the debt to Forbes and Co.; the debt to Mansfield and Co.; the 7,000*l.* reduced annuities, and other sums your lordships have heard of; all paid with the public money.

Your lordships have been told, that the noble lord was quite indifferent with respect to his own affairs; that he was wholly negligent and careless about them; with respect to those of the public, however, he was, as Mr. Trotter was induced to say, from the form in which the question was put to him, quite the reverse; there he was all vigilance and all attention. My lords, it is singular to observe, what was the effect of this different line of conduct in the noble lord; where he was careless or wholly indifferent every thing was prosperous. What greater prosperity could have attended a man the most careful of his own affairs? His debts bearing interest to a great amount are paid without any interference on his part; large sums are advanced him without interest and without solicitation; India stock, loyalty loan, and bank annuities, all as it were spontaneously place themselves to the credit of his account, and swell his profits: all this happens from the noble lord's negligence and inattention; what a recommendation of negligence and inattention, that they are attended with such prosperity! But with respect to the affairs of the public, about which the noble lord was always careful, and always attentive, see what is the consequence of his attention and his care. Sums to the amount of half a million of public money, are all risked upon the credit and left to the prudence of one private individual. If Mr. Trotter, instead of placing this money upon good securities, with the assistance of his wary friend Mr. Mark Sprot, had been a man more adventurous, and had employed it in more hazardous speculations, what risk must the public not have run, and what loss might they not have sustained, and all this where the noble lord was most vigilant and active? Good God! do the counsel really desire your lordships to receive this character of a noble-

man who has been so long in his majesty's councils, whom we have so long seen a minister of this country, that where he is careless and inattentive, and pays no regard to what is doing, every thing prospers; but the moment he gives a fixed attention to any subject, every thing is thrown into disorder, and the utmost confusion prevails? I have no doubt, the gentlemen thought they had produced some considerable effect, from the emphatic manner in which these questions were put to Mr. Trotter, upon his cross-examination; but I think the learned counsel, if they mean really to have the benefit of that evidence, will find themselves involved in serious difficulties, when they come to make use of those defences, to which they have so evidently alluded upon their cross-examination.

My lords, in what I have already addressed to your lordships, I have supposed that it might be a matter of question before your lordships, whether my lord Melville really knew that Mr. Trotter was deriving any advantage from this use of the public money, by so transferring it to Mr. Coutts; I have proceeded, and the examinations of the learned gentlemen who are of counsel for the defendant have likewise proceeded, upon that supposition, and I think, unless I mis-recollect the evidence which was given, that Mr. Trotter was induced to say, that lord Melville never knew that he (Mr. Trotter) had derived any advantage at all from the public money. My lords, a better witness upon that subject than Mr. Trotter is lord Melville himself, and I will state to your lordships, what his lordship has been pleased to say upon that subject; and your lordships would be surprised to hear, if you had not already had the evidence read to you, that lord Melville has expressly admitted, that he knew Mr. Trotter drew this money from the Bank, for the purposes of private emolument—that he knew that Mr. Trotter made private emolument of the money he had so drawn. I allude to what was stated by the noble lord in his examination before the commissioners of naval inquiry. Before however I make use of that evidence, it may be right for me to make some observations on it to your lordships. We proved the examination by one of the commissioners; and a great many questions were put to him, upon cross-examination, the tendency of which, if I understood them, was to show, that the noble lord had been taken very much by surprise; that he had not been previously apprised either of the particular questions that were to be put to him, or of the drift or object of the examination which was to take place. One would imagine, from seeing that the examination is to be met by suggestions of this kind, that it bore upon the face of it some evidence of its being the declaration of a person whose artless simplicity had been taken advantage of; some one wholly inexperienced in the ways of men, who had been induced by questions being put to him



on the sudden, to give answers which he would be extremely glad at some subsequent time to retract, and which, if he had an opportunity of fully considering, he never would have given; but instead of this, one sees the most extreme caution in every answer; one finds a refusal to answer; a protection claimed under the letter of the law; a desire to be understood with certain qualifications and reserves; from the beginning of the examination to the end of it, one sees the plainest marks of the person under examination being most completely upon his guard, and having had every opportunity possible to prepare himself.

That the noble lord had not a copy of the questions delivered to him, and time given to him after he had the questions to prepare himself to answer them, is certainly true; and I am sure your lordships will think that the reason given by the commissioner, who has been examined upon the subject, was most satisfactory. The public undoubtedly, are under the greatest obligations to that gentleman, and to the other honourable men who made these reports, for having honourably, impartially, and stedfastly, discharged a great public duty which was imposed upon them.

My lords, if they had taken the course, which it seems to have been suggested would have been the proper course for them to take, and had given written questions to the persons whom they called before them, that they might go home and consult their friends, as to what answers they should give; if they had done that, your lordships may be very sure that no good effect would ever have been produced by any inquiry they could make. And if any persons were desirous to have commissioners to inquire into the state of any public department, who should have a specious appearance of rendering service to the public, but who should really never render them any beneficial service whatever, they would have only just to take the course now suggested, to give written questions to the persons they intend to call, and allow them time to go home and consult in what way they should answer; that is, how they could best elude the inquiries that were made.—But is there the least pretence for saying that there was any surprise upon the noble lord in any of the answers which he gave? The very first answer which the noble lord gives upon that examination,—which your lordships observe took place on the 5th of November, 1804; the letter to him having been written on the 26th of June in the same year, so that the noble lord had had four months to consider the subject upon which he was to be examined;—the very first answer which he gives, refers to the examination which had taken place of Mr. Trotter. His first answer is, having those deficiencies in his account stated, and being asked to what cause they are to be attributed,—“Although I take for granted, the sums are stated by the commissioners ac-

curately, I could not, from memory, state that they are so. I desired Mr. Trotter, so far as I am concerned, to give you every information that he could, and it was only in consequence of a conversation with him, immediately after the receipt of your letter to me, on the 26th of June, that I learned, from the manner in which he kept his private accounts, that it was impossible for him to give me the accurate information I required.” So your lordships see, that the noble lord had been consulting with Mr. Trotter, who had many months before been examined by those commissioners, upon the subjects upon which he was to be examined; and the subject had been dwelling upon his lordship’s mind long before he was called upon to be examined. The precept for the examination of Mr. Trotter had been made above a twelvemonth before, on the 23rd of January, 1803; that was the first precept for the balance of the Navy-pay-office; the return to it was made upon the 2nd of February, 1803,—a date your lordships will find extremely memorable with a view to another transaction in this cause; I mean the release which was executed, and the agreement for the destruction of the vouchers which is recited in that release;—a return to that precept was made on the 2nd of February, 1803; the subjects were deeply fixed on the mind of Mr. Trotter, above a year and a half before. It was with a view to this, as he expressly stated, that he had this release executed; there had been conversations between the noble lord and him upon this subject before, and then after mature consideration, for above a year and a half the noble lord is called upon to answer to those questions; and your lordships are to be persuaded, that it was by some kind of surprise, that the noble lord was induced to give the answers which he gave.—It was asked by one of the learned counsel, whether the noble lord was allowed to correct those answers: your lordships were told that he was; but do your lordships recollect, that at a considerable distance of time, on the 28th of March, 1805, after this report had been published, after the examination of lord Melville was before the public, and had been coolly and deliberately considered by himself, that he then wrote a letter to correct what inaccuracies there might have been in his former examination? a letter which the Commons thought it right, in justice to the noble lord, to lay before your lordships, though it furnishes, undoubtedly, evidence rather in his favour, than any evidence they can rely upon: your lordships find therefore, that he not only had an opportunity of correcting it, but that he did maturely consider and correct it, and that after so long a period of time had elapsed; so that it is impossible to say that the noble lord is not to be bound by every word in that examination, where it is not so corrected.

Then, my lords, in that examination, what does the noble lord state respecting Mr. Trot-



ter's making advantage of the public money?—he says, that he knew it; that he allowed it; that he thought it a perquisite the paymaster ought to receive. The way in which he answers it is this: He is asked whether he gave permission to draw money from the Bank and lodge it in the hands of a private Banker, with a view to his, the (paymaster's) deriving any advantage or emolument therefrom? to which he answers "If it is meant to ask me, whether I gave any direct authority to the paymaster, to use the money in the manner above mentioned, I should certainly answer, No. But I have no hesitation in saying that I believed and understood he did, and never prohibited him from doing so; and I believe it was so understood by others at different times, when the establishment of the Navy-pay-office was under consideration, when certainly no competent provision was made for the person exercising that trust of great extent and responsibility."

Now, my lords, when I have read this answer to your lordships, given by the noble lord to the commissioners of Naval inquiry,—an answer, which, upon mature consideration, he thinks proper to abide by, for he does not desire to correct it at the time when he writes that letter, correcting other parts of his examination:—I say, when I have done that, what is there that remains for the Commons to do to satisfy your lordships, that the noble lord is guilty of the crime imputed to him?

The crime imputed to the noble lord is merely this:—that he, after the act had passed, by which it was declared that the public money should remain at the Bank, to be never drawn from thence, but for the purpose of being applied to the public service, permitted his paymaster to draw it from the Bank, not for the purpose of public service, but for the purpose of making an advantage of it to himself, the noble lord believing and understanding at the time, that the paymaster was to use the money for his own advantage and emolument. My lords, what is there that remains? There is nothing in dispute between us: we have the defendant admitting that with which he is charged, for that alone constitutes the legal offence; and I hope your lordships will allow me to impress this strongly upon your minds, that, although we have thought it right to go into all these accounts, and trace the particular sums in the manner we have done, yet for the purpose of conviction, it is unnecessary; for we have, upon the examination of the noble lord alone, that which is sufficient to entitle us to his conviction.

My lords, I cannot persuade myself that it will be seriously contended before your lordships, that because the paymaster, in these drafts, upon the Bank, chose to insert some particular head of service; that because there was something stated in words, which was known to be an untruth at the time it was stated, but which, if it had been true, would not have been in obedience to the act of par-

liament; that therefore the act was obeyed: it cannot be seriously contended; the learned counsel have too much respect for your lordships, to contend this before you. What! because those words, *to the pay* and *to the victualling-banch*, were inserted in those drafts, which were really drawn to place the money at Messrs. Coutts's, for the purpose of Mr. Trotter making advantage of it, had there therefore been an obedience to the act of parliament? The act requires that those sums shall be drawn for, only to be applied to the public service; to these public services they were already appropriated; and it could answer no purpose to state in these drafts, for what purpose it was drawn, because no money could be drawn from the Exchequer without stating for what purpose it was drawn; and these words were inserted merely that there might be something in them, which would have the semblance of compliance with the terms of the act, when it was in truth intended, that the act should be grossly violated.

My lords, what are the reasons given by the noble lord for consenting to this money being so withdrawn? Your lordships are told it was represented to him, that it was proper it should be so withdrawn, because it would be attended with some official convenience. Now, my lords, in any case where the criminal intention of a party comes in question, it has always been considered as an indisputable rule of evidence, that where an account is given by him of his conduct, which does not consist with truth, that that account so given, does of itself afford the strongest presumption of guilt; and I beg your lordships would bear this rule in your minds, when I come to state the reason which is assigned for this consent, given by the noble lord to Mr. Trotter's removing the money from the Bank into the hands of Messrs. Coutts and company. The noble lord is pleased to say, in his examination, to the commissioners of Naval inquiry, and he seems to intend to say,—unless there shall be upon this subject, as upon some others, that variance of opinion which we have already seen between the defendant and his counsel,—he means to state to your lordships, that his reason for permitting this to be withdrawn from the Bank to Messieurs Coutts's was, in the words of his examination before the Naval commissicners; "An opinion in which I still adhere, that if the whole monies, necessarily drawn from the Bank, in pursuance of orders from the competent boards, were lodged in the hands of a respectable banker, under the control of the paymaster of the Navy, that it would add more facility to the conduct of the business of the office, in the multitude of small payments to be made, than if the money were deposited according to the constitution of the office, in an Iron chest. I likewise had it in contemplation, that, in the receipts of these various small payments, made to such a variety of persons, they would be less liable to be imposed upon by



that mode of transacting the business, than if they were each to receive drafts for such small sums upon the Bank, at such a distance from the office after its removal to Somerset place. It would add more facility to the conduct of the business of the office in the multitude of small payments to be made."

Now, it is in evidence before your lordships, and it is a fact upon which it is quite impossible that any evidence can be brought on the other side, that there is no small payment whatever made by the paymaster; that he never, in the exercise of his office, had any small payment to make, except in the Exchequer fees, which is a matter of quite a different consideration and is not what is at all alluded to in this answer.

Your lordships will recollect what has been stated with respect to the constitution of the office: that the paymaster is in fact the treasurer; that all the paymaster has to do is to receive money from the Treasury, and afterwards to pay over, to the various sub-accountants, the money which is to remain in their hands, to answer the demands of the public creditors, by the bills assigned upon the different boards; that the payments made by the paymaster are always in very large sums; that in the whole of Mr. Trotter's account with Mr. Coutts, which is in evidence before your lordships, there are not more than three payments, during so great a length of time, of sums so small as a thousand pounds each; that it is never the duty of a paymaster to pay any small sums whatever; that it is only in one branch that small sums are ever paid;—the Navy branch is to pay the bills for the fitting out of the Navy; the victualling for victualling the Navy; which are comparatively in large sums;—but the only branch that does make small payments is the Pay branch. All this is proved; it was impossible that the paymaster could ever have any of these small payments to make; and Mr. Trotter has admitted, and his accounts prove, that after the money had been transferred to Mr. Coutts's upon the pretence that there were these small payments to be made (and which it seems is still insisted upon) there never was any small sum whatever paid, but the money was transferred to the various sub-accountants, all of whom were under the necessity of transferring their accounts also to Mr. Coutts's from the Bank: I say, all the payments so made were made in these large sums, and that there is not the least pretence for what is stated to have been the ground upon which this removal of the money from the Bank was made. But will your lordships be told that the noble lord did not know the nature of his own office? that he was so ignorant of the duties which were to be performed by himself, in the person of his paymaster, that he did not know that there were not small payments to be made? that he was in total ignorance as to the truth of the representation made to him by Mr. Trotter? But, in point of law, can a

public officer be permitted to say, that he is totally a stranger to the duties of his office; those duties so few too as they were in this case, and the emoluments so large? But if such a defence can be permitted to any man; have not your lordships the strongest evidence, proceeding from the noble lord himself, that it is not applicable to this case, that he was in truth perfectly acquainted with the most minute details of his office; that he knew the duties of the office, that he knew the duties of the persons employed in the most subordinate situations in it?

Do your lordships recollect, that, in 1786, the noble lord proposed to his majesty a new regulation of every office in the whole of his department? Do your lordships recollect the order of council, the memorial that was made by lord Melville, and the order of council proceeding upon it? in which is ascertained the exact amount to which the salary of every one of the officers is to be raised; beginning with the deputy paymaster, going through the chief clerks of the several branches, Pay-branch, Navy-branch, Victualling-branch, the Inspector's-branch, and going down so low as to the house and door-keeper, and messengers; that the noble lord had taken a full and extensive view, and entered into the most minute detail as to every department of the office, and upon that review he proposed to his majesty an augmentation of the salaries of those different officers, which raised the expense of the establishment from 1,700*l.* a year, at which it was fixed before, to the sum of 9,128*l.*; an augmentation stated, and I believe very truly stated, to be proceeding upon principles of true œconomy; because ascertained and fixed salaries were substituted, in the place of all the fees and uncertain emoluments of the different officers. This the noble lord proposed; he had all the credit of it: he had the credit of being a most active and vigilant servant of the public, who had instituted enquiries neglected by former treasurers of the navy; who had entered into the most painful, and perhaps disgusting, detail as to every profit which every officer, in every situation under him, had: he has the merit of all this, and then, when he is called upon to answer for the misconduct which he has permitted in persons who are employed under him, your lordships are to be told, that he was wholly indifferent to these things; that he knew nothing at all of the duties he had undertaken to discharge; that he left everything to his paymaster, and that he himself was wholly ignorant upon the subject.

My lords, another reason has been given for removing this money to a private banker from the Bank; it has been said, that it was done because there was greater security. The witness who has been called upon to explain that to your lordships, has found himself under great difficulty, to tell you what it was he meant by that greater security. At last he explained, that, by that greater security, he



meant that persons might be exposed to be robbed; might meet with accidents; or might embezzle the public money, in carrying the drafts from Somerset-house, where the office is established, to the Bank, and, after your lordships have been gravely told this, it turns out, upon the further examination of that gentleman, that upon one occasion, no less a sum than a million of money was brought by a messenger in Bank-notes, carried in the pocket of the messenger from the Bank, past the office in Somerset-house, to be lodged in the shop of Mr. Coutts. With what consistency are your lordships told, that there were any apprehensions of danger, to be incurred by sending drafts from one place to another, when you see what the risks were that were run by this removal from the Bank to this private banker's, and which, but for this, never could have existed?

Your lordships have been told something about the public convenience, and yet your lordships have had it in evidence, that the public convenience was so little consulted, by the transfer of the money to the office at Somerset-house, that the payments at Somerset-house always ceased at two o'clock; whereas at the Bank, they were continued three hours later. Your lordships would require some more strong and decisive evidence of the public convenience being consulted, if you could enter into this consideration at all; but the noble lord was precluded by the act, from entertaining any considerations of the kind. Your lordships find, too, that the defendant when he was examined before the commissioners, was called upon to give an account of this transaction: if he had acted without a criminal intention, he had but to state what the fact really was; instead of that, you find him endeavouring to shelter himself under a pretence which it seems impossible, upon the evidence as it now stands, should be consistent with truth.

And upon this topic of public convenience, your lordships will undoubtedly recollect the evidence given by Mr. Swaffield; from which it appears, upon the cross-examination by one of the learned counsel, that the only error that there ever had been in his accounts, during sixty years that he has been employed in his office, arose from the circumstance of this transfer being made from the Bank to a private banker's.

My lords, I now proceed to that which, in some points of view, is by far the most important and serious part of this case; as far as it affects the honour and the character of the noble defendant, certainly the most important: I mean the advantage which lord Melville himself derived, from the public money being so transferred and used by Mr. Trotter.

It is not my intention to waste your lordships' time by going over minutely, or dwelling upon all the instances of advantage which the noble lord derived from the public money; there are some few upon which I shall prin-

cipally insist. The one which I shall take first, is the transaction respecting India stock.

My lords, in the year 1789 (lord Melville being at that time treasurer of the navy and president of the board of control) a conversation takes place between him and Mr. Trotter, no matter how introduced, upon the subject of East India stock; in which the noble lord states to Mr. Trotter his opinion, that India stock would probably (as Mr. Trotter said he understood, at some distant period) become extremely valuable property; and he at the same time, expressed to Mr. Trotter his wish to be a possessor of East India stock. It was a very natural observation to make upon it, that his lordship had better then purchase some stock; and Mr. Trotter accordingly immediately made that observation to the noble lord. The noble lord told him he had no money to command; and Mr. Trotter then proposed to him (he, Trotter, being at the time lord Melville's paymaster), to apply part of the public money, part of those balances which he said he had at all times remaining in his hands, to the purchase of India stock, for the benefit of him (lord Melville), the then treasurer of the navy, and president of the board of control. The answer, Mr. Trotter says, that was given to him by lord Melville was, that he positively refused it, and in such terms that he conceived he had incurred his lordship's displeasure; the whole of which has been compendiously reduced in the question put by the noble lord's counsel, and since adopted by the witness, into these two words, that he indignantly rejected it. My lords, in the course of the same conversation, in which the noble lord had indignantly rejected a proposal, which his very indignation shows that he felt to be a reproach to him,—and he must indeed have felt the greatest indignation, to think that a servant of his should dare to propose to him, to apply part of the public money in his hands, not only to his own private advantage, but to his private advantage in speculating in that public fund in which, by his majesty's confidence which he possessed, and by the confidence which was reposed in him by the East India Company, he could not have been a fair speculator:—I say, that, in the course of the same conversation, Mr. Trotter, it seems, proposed to his lordship to get some person to lend him money to purchase the stock which he wanted, and to lend it him upon no other security than the stock itself.

My lords, to whom was this proposal made? Was it to a person unaccustomed to public business, not knowing what the transactions of mankind upon such subjects are? No: it was made to a man of great talents, having a great insight into the human character, of deep observation, having been in the highest public situations, having lived in public all his life, having held a high legal office under his majesty during the best part of his



life; to him it is proposed, that some person should be found who would lend money to another to speculate in the funds, having no security whatever for the repayment of it but the very stock in which he is to speculate. Why, if this was to be proposed by some of those persons who advertise in the public newspapers, that they possess the means to enable persons to make large fortunes, would it not be supposed they were insulting the credulity of mankind by the proposal? Is it to be imagined, that a person not having a shilling to advance, can speculate in the public funds to the amount of 23,000*l.*, by giving, as a security to the person who is to lend him the money, nothing but the stock which he is to purchase, and upon which he is to speculate? Was not the impossibility, upon the face of it, evident? How was it possible that any man could shut his eyes to this? What, a man lend money upon the public stocks, where, if there be any gain, it must be the gain of the borrower, and if any loss, it must be the loss of the lender; since he has nothing but the stock for his security? Could any person, however ignorant of the affairs of mankind, not a man who had a legal education, not a man who had been in all the variety of business in which the noble lord had been engaged, but could any man possibly conceive that, by such a proposal any thing more was intended by the person who made it, than to do, under the false colour so held out, that which had been first proposed, and which was rejected when stated in all its natural deformity? What would you say, if a suitor in a court of justice were to make an application to a judge, and offer him at once a bribe to decide the cause depending before him in his favour, and upon the judge indignantly rejecting it, the suitor should say, I will annex no condition to the favour I ask, but you will accept this present?

Is it possible that your lordships can consider, that upon this conversation as Mr. Trotter states it, the loan of public money to lord Melville was not the transaction understood between them, no matter what was expressed? But after this the transaction is supposed to take place, by some person having advanced the money: no security; no memorandum even of the transaction takes place; the noble lord does not even secure to himself any benefit which is to result from it, by any memorandum of an agreement; there is no security to the lender; there is no security to the borrower; all remains upon the honour of the persons who have made this proposal to each other; and your lordships are told, that no inquiry was ever made by the noble lord of his paymaster, not even after this transaction, whether he had employed any public money for his own private advantage?

If the noble lord was ignorant of it before, was it possible he could entertain any doubt after this, when his paymaster tells him, here, I will lend you; you, the man above all others from whom it ought to be concealed that I

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am making any advantage of this public money; I tell you openly, that I will let you yourself make this advantage of it? Could it be conceived, that a person who could make this proposal, would abstain himself from making advantage of it? That he would have no friend to whom he would be desirous to afford the same advantage? No matter how the noble lord had before shut his eyes to all these concerns, is there a possibility that, from this moment, he should not have understood that Trotter was making a profit, not from any advantage Mr. Coutts might give him, for having so large a sum placed in his hands, but that he was making a fortune by speculating with the public money in the funds, or upon other securities? Your lordships will find, that, before this conversation had taken place, 61,000*l.* was the utmost of the public balance that Mr. Trotter had had in his hands; but after this conversation, after this indignant rejection, your lordships find Mr. Trotter, as well he might, thought he had complete licence to do what he pleased with the public money. Your lordships find 200,000*l.*, 300,000*l.*, and 350,000*l.* transferred from the Bank to his private account, and speculated with in the public funds, in the same manner as the small sums had before been speculated with. Is it possible that such a degree of negligence, taking it most liberally for the noble lord, and believing that he only shut his eyes to it; is it possible that such negligence could take place? that he could see the paymaster making such a proposal to him, having acquired such confidence and boldness in violating the trust reposed in him, as to venture such a proposal, and yet that the defendant should make no inquiry at all? unless your lordships are disposed, which I am sure you are not, to shut your eyes against the strongest conviction, it is surely impossible for you to say, either that the noble lord did not know of the enormous advantage Mr. Trotter was making of those sums in his hands, or that he was not himself deriving immediate private advantage from the public money.

Your lordships will recollect, that this stock was transferred from one person to another, till at last, when it became necessary for lord Melville to pay in a large balance at his going out of office, to the amount of 71,000*l.* Mr. Trotter's balance being at that time 220,000*l.*, when it became necessary to make up these enormous sums, the whole of this India stock was sold,—not immediately sold, but transferred to Mr. Mark Sprot, for the then value: it remaining Mark Sprot's from that time till it was afterwards sold, and the money paid into Sprot's pocket.

My lords, I have dwelt merely upon the general nature of the transaction: I have not thought it necessary to go into the minute circumstances which attend it. If your lordships recollect those circumstances, it is quite impossible you should not be satisfied that the



noble lord could not be ignorant of the stock being purchased with public money. When you recollect that 1,000*l.* (part of the stock) was transferred immediately into his own own name; that he himself paid 3,000*l.*, part of the 23,000*l.*, to Mr. Trotter; that in all the accounts with Mr. Trotter, he was charged with the interest, and was credited with the dividends; not as money paid to Mr. Lind for the interest, and received from the stock for dividends, but the whole credit and the whole debt, between Mr. Trotter and the noble lord; you must be satisfied of this.

My lords, I now proceed to the next transaction; which appears to me to make the consequence quite inevitable, that the noble lord himself must have derived benefit from this use of the public money: I mean, the transaction of the loyalty loan. Your lordships will recollect, that, in the year 1797, lord Melville subscribed to that loan, which acquired the name of Loyalty, a sum of 10,000*l.*; that the whole of that 10,000*l.* was paid for him by Messieurs Coutts, and was repaid to Messieurs Coutts by Mr. Trotter. It was paid by ten several instalments, all of which are paid originally by Messieurs Coutts, and all afterwards repaid to Messieurs Coutts by Mr. Trotter, and repaid out of the public money in Mr. Trotter's hands. If the transaction had rested only here, one might imagine that lord Melville conceived that these sums of money, which had been so applied for his benefit by Mr. Trotter, were sums that were proceeding entirely from the private property of Mr. Trotter. Your lordships recollecting, however, that Mr. Trotter, who was making these large advances for lord Melville, and who charged no interest upon these advances; for you will remember that it is in evidence, not only that the 4,000*l.* advanced to him soon after he was appointed to be paymaster, and for which a bond was given, was lent without any interest reserved upon the security, or any interest ever paid; but that all the great advances which were afterwards from time to time made by Mr. Trotter to lord Melville, were also without interest; that the whole 10,000*l.*, for the loyalty loan was likewise advanced by Mr. Trotter without any interest being charged to lord Melville in his account; and your lordships will also recollect, that these great advances which lord Melville condescends so to accept, from his deputy, from his servant, were made by a man who, the noble lord knew, at the time he appointed him his paymaster, was living upon a salary of 100*l.* a year, to which he had recently been advanced, his salary being, at the time the connexion was first formed between them, only 50*l.* a year. From a person with such means only, but entrusted with the use of sums to such large magnitude—from this person—the noble lord consents to receive the loan of these large sums of money, without any interest paid for them. If no interest was paid, was not some compensation

to be made to him? And what could that compensation be, but the illegal profit which was to be derived to him from the connivance, the negligence, and the consent of the noble lord? This 10,000*l.* for the loyalty loan was carried to the account current which existed between the noble lord and Mr. Trotter, his paymaster; it continued so for a considerable length of time; but at last the whole of this advance was transferred from the account current to the chest account, that is, to the public account of lord Melville, as treasurer of the navy. And, my lords, here it will be right for me to call your lordships' attention to the nature of these two accounts, which were kept by Mr. Trotter; which were shown from time to time to lord Melville; and which were signed from time to time by his lordship. The one, the account current, was purely a private account; the first item of which was the sum of 4,000*l.* advanced by Mr. Trotter to lord Melville, soon after he came into his office; advanced as a loan without interest.

The first item in the other account, the Chest account, was the 10,600*l.* public money, which lord Melville stated to Mr. Trotter, upon his entering into the office of paymaster, he had in his hands, and was to account for. As the accounts set out, so they proceeded. In the account current were entered all the private advances made by Mr. Trotter to lord Melville: In the Chest account were entered all the public advances, the advances avowedly of public money made for the benefit of lord Melville. According to the mode in which sums were required to be advanced, they were entered in one or other of the accounts: when lord Melville condescended to state the particular occasion he had for money, and to make a request that Mr. Trotter would accommodate him, Mr. Trotter understood that that was to be considered as a private advance, and it was accordingly carried to the account current; but when lord Melville, without explanation, required a sum to be advanced to him, it was understood that it was public money, and it was carried to the Chest account. After some time, Mr. Trotter not choosing any longer to run the risk of lord Melville's responsibility, as to the 10,000*l.* which he was indebted to him for the advance of the loyalty loan, thought it better to expose the public to the risk; and, therefore, as he himself says, for that very reason it was that he transferred this from the account current to the Chest account. That Chest account to which the 10,000*l.* advanced for the loyalty loan was so charged, was shown to lord Melville; it was signed by lord Melville; it *was*, I wish I could say it *is*, in lord Melville's possession; it ought to be in his possession; it is the public account of a public servant, and nothing can justify the destruction of it. If it is in his possession perhaps your lordships will see it. If it is not in his possession, but really has been destroyed,



your lordships will judge what are the inferences to be drawn from that fact. But as the matter now stands, this is clear; that lord Melville, at that moment, must have known that Mr. Trotter had advanced, of the public money, for his private advantage, so large a sum as 10,000*l*. Lord Melville makes no remonstrance against it; there was no such indignant rejection as we have heard of; that indignation which had blazed forth in 1789, when the proposal was first made, was now all stifled; the noble lord submits to have his share of this loyalty loan paid for with the public money; he submits to accept all the benefit and advantage derived from it at the expense of the public; I say, at the expense of the public, because your lordships are not to be told, as matter of excuse, that even if this money had not been so used by him, the public would not have used it; you are not to be told that the public would not have had this advantage which was gained upon the loyalty loan, after the act had expressly declared, that this money should not be used for private purposes; after an increase of salary had been given for not so using it. I am sure your lordships will not listen to an argument of that sort; and therefore I say, it is to the loss of the public that he consents to receive the whole of the benefit arising from this sum of money.

Your lordships have had a calculation of profit arising to the noble lord from all this, and from what I ought indeed before to have stated, namely, that the sums paid to sir William Forbes and Company, and Mansfield and Company, were advanced by Mr. Trotter, without interest, to discharge debts carrying interest. My lords, you have had a calculation of the interest and profits that were derived to the defendant from the use of all these sums. My lords, when the witness was examined to that calculation, the learned counsel thought it right to ask him, or perhaps it was some other of the witnesses, whether the loyalty loan was not at a discount, after it had been subscribed for by the noble lord. I take for granted that it was, but that only proves that the calculation is made erroneously to the advantage of the noble lord. We ought to charge him with having made a greater profit upon it. If the stock had fallen the noble lord would have had to bear the loss, and he must have borne it, if the public money had not been supplied to enable him to keep the stock; he has therefore made a gain from the public, by being enabled to save himself from the loss upon the loan, as well as by the advantage, which he afterwards obtained by the rise of the stock before it was sold out; and by the addition of the dividend paid upon it: it is clear, therefore, that we have stated this most disadvantageously to ourselves, and most advantageously to the noble lord.

My lords, I am afraid I have already taken up too much of your lordships' time; I feel

that it is of very great importance, that your lordships' attention should be particularly directed to some of the strongest facts of this case, because it is upon a few strong facts that this case may be decided, and therefore I have dwelt much upon them, and have passed over a great number of transactions, upon which evidence has been adduced.

My lords, I have little to add, but upon the destruction of the vouchers. The Commons have charged that as a substantive offence in the noble lord. My lords, it is to be considered in two points of view; as being in itself an offence, and as affording a strong presumption (if such a presumption were wanting) of the guilt of the noble lord, in the transactions which have been already under your lordships' consideration. My lords, I will take the liberty of considering it first in the latter point of view, as it is to be considered as a presumption of his guilt; but before I do that, it is necessary to state the fact distinctly to your lordships. Your lordships find that a release was executed on the 18th of February, by the noble lord, in Scotland, and by Mr. Trotter, I think, on the 23rd of the same month, in London; and, my lords, I am not quite sure whether the effect of that release has been very well understood by the Court.

It is a release of all demands between lord Melville and Mr. Trotter, except a certain sum which is stated to be the balance of accounts between them. And in that release is contained a recital, that the parties had mutually delivered up, or had agreed to deliver up, and destroy, all the vouchers which were in each other's possession. The deed does not itself make any provision whatever for the destruction of the vouchers; there is no obligation imposed by the instrument upon either party, to destroy vouchers; and I should have thought that it hardly could have been a question, whether this were a known form in any legal precedent for such an instrument in Scotland. If there ever was a known form of release which contained a clause for the destruction of vouchers, it would have provided something respecting their destruction; but your lordships see that the instrument here does nothing but merely preserve the memory and record of the transaction; it merely recites that the parties had destroyed all their vouchers, or that they had delivered up, or would destroy them. It has been said that there have not been any vouchers destroyed by the noble lord, in consequence of the instrument, or since it was executed. I think that has been said. I do not mean that it is in evidence before your lordships; it certainly is not;—but it may be said by the counsel, and I have a right to anticipate the defence that probably will be made.

Now, I would give the learned counsel their choice upon that subject; either the vouchers were destroyed in consequence of that instrument being executed; and then your lordships will see how material the particular mo-



ment at which that instrument was executed is; or, they had all been previously destroyed. If they had been previously destroyed, they had been destroyed before the accounts were settled, and before the parties had released each other. If it be true, as it has been stated, that no vouchers were destroyed in consequence of this, or subsequently to this, then they had all been destroyed while the account was yet an unsettled and depending account; when it was the interest of each party to preserve those vouchers; when it must have been peculiarly the interest of the noble lord to preserve them, because they were the transactions of his agent. The noble lord's vouchers in possession of Mr. Trotter were comparatively of no importance; but the vouchers in the hand of lord Melville were of the utmost importance: they were the vouchers by which he could alone check the account of his agent. If these were destroyed before the accounts were settled, and the mutual demands released, for what purpose could they be destroyed, but for the purpose of destroying that evidence, which it was known could never come to light without bringing destruction and ruin on the heads of the parties concerned in them? That the vouchers have been destroyed by the noble lord, we have his own evidence. It is declared in the letter written to the commissioners of naval inquiry, and which is upon your lordships' minutes, that it was before this examination by the commissioners, that they were destroyed. In his letter of the 30th of June, 1804, he says, "It is more than four years since I left the office of treasurer of the Navy; and at the period of my so doing, having accounted for every sum imprested into my hands, I transferred the whole existing balance to my successor: from that time, I never considered any one paper or voucher that remained in my hands, of the smallest use to myself or any other person." Your lordships will recollect, that the chest accounts, delivered periodically to the noble lord, and signed by him, were among those papers. "And, consequently, being often in the practice since I retired to Scotland, of employing occasionally some time in assorting my papers, and destroying those that were useless, I am satisfied there does not exist any one material by which I could make up such an account as you specify."

Now, your lordships will observe, that this letter shows, not only that the vouchers were destroyed, but that they were not carelessly destroyed; that they were destroyed with selection, upon mature consideration; upon a judgment, as it were, passed by the noble lord upon every voucher; it was done occasionally, from time to time, when he had leisure to attend to those concerns; when his mind was disengaged from other business; when he could look at every paper; see what the bearing of it was; what its importance; what conviction it might bring against him-

self if ever produced; which paper it was useful to preserve, and which it was useful to destroy: it was upon this mature consideration, that all these vouchers were destroyed by the noble lord; and this is the evidence he has himself produced.

Now, my lords, consider at what time it was this release was executed. It was executed not upon the settlement of accounts; there is no account settled at the moment the release is executed. The noble lord and Mr. Trotter had both been in Scotland, shortly before the release was executed; they were both in London shortly after the release was executed and yet it was thought so important to have that release executed, at one particular moment, that the release is prepared while Mr. Trotter was in London, is sent away as speedily as it can to be executed by lord Melville in Scotland, and then returned to be executed as speedily as possible in London. And this is done after the precept had been received from the commissioners of Naval Inquiry, for an account of these transactions. The instructions were given for it upon the very day on which the return was made to that precept. The witness tells your lordships, that it was in consequence of this precept that he had this release prepared; and will your lordships, after all this, give credit to what is said by the witness, that he was not aware at all that this declaration, respecting the destruction of vouchers, was in it? What was the purpose of inserting that clause for the destruction of vouchers? Manifestly it was this: the vouchers were already destroyed, and when the parties should be called upon to produce these vouchers, the answer, that they had destroyed them, would require some explanation; for it would naturally be asked, how happened you to destroy all these vouchers, which are so important? For the purpose then of affording an answer to that question, and for that purpose alone, was this recital inserted in the release. This evidence was fabricated for no other purpose; it was, that they might say, the reason we do not produce the vouchers is, that we had agreed with each other to destroy them, and therefore we were bound to do it. The obligation to do the thing was evidently brought into existence after the thing had been done. The vouchers having been destroyed, the deed was executed merely for the purpose of affording an excuse for it. Of what avail then is it, that in this instrument there is to be found a clause of registration? It might never be necessary to use it; and it has never yet been registered, because the intended use of it it has never been found convenient to make; they felt that they could not succeed in their design, and their project has been abandoned.

In some defences I have seen for the noble defendant, it is said, would any man who intended to do such an act have made a public declaration of it in a deed, and have taken care that that deed should be registered in a



place where all persons may have resort to it? When the friends of the noble lord used such an argument as this, one would think they supposed that it was immoral to relate a crime which a man had committed, and not immoral to commit the crime itself. It is the destruction of the vouchers which is the material thing, and not the declaration respecting it. It is said, the noble lord is negligent of his affairs; that he executed this deed because it was sent him; that he, a nobleman who had long practised himself in the highest situation at the bar, executed this deed without ever having looked at it; and therefore no prejudice ought to arise in his disfavour in consequence of the recital contained in the deed. All that would be very well, if the vouchers existed; but they have been all destroyed. What signifies whether he states in the deed that he would destroy them or not, if he has actually destroyed them? The crime is, that he has destroyed the evidence, and has endeavoured to suppress all the means of conviction; and not that he had stated in a deed that he had done so.

If your lordships could entertain any doubt upon the state of the facts as they exist before you;—and your lordships will always understand me to be supposing that the evidence which will be produced on the part of the defendant will not vary the state of the case which I reason upon, because if they do vary it, then every thing I have said is to have no weight with your lordships, as far as the case is varied;—but upon the supposition that no variation is made in the facts, as I now state them, I ask your lordships, whether, if any doubt upon the prosecutors evidence remains upon your minds, it is possible that your lordships should not, from the destruction of these vouchers, presume the defendant guilty of every thing that we impute to him?

I should think it could hardly be necessary to your lordships collectively, I am sure it cannot to many of you individually, to state what inferences courts of justice always draw from the destruction of evidence. Most of the cases that have occurred of that kind, at least of those that I have known, are civil cases; but I know of no distinction in this respect between civil and criminal cases. The presumption in the one case is, as I conceive—and I shall presently state why I conceive it is—as strong as in the other.

My lords, in civil cases, a party who destroys evidence of a transaction is always charged to the full extent that it was possible that that transaction could have gone. I will state to your lordships a very few cases, which have occurred upon questions of this kind. There is in Sir John Strange's Reports, a case which was decided at *nisi prius*, but which has been always recognized and acted upon as law: *Edwards v. Delamare*. In that case a boy in one of the most wretched conditions of life, happened to find in the street, a ring; he carried it to the shop of some jeweller in the

neighbourhood, and desired to know what the value of it was; the tradesman artfully took out the stone in it, told the boy it was of the value of a few half-pence, which he tendered to him, and refused to give him any further account; the boy rejected the offer, and insisted upon having the gem restored to him. That was refused; an action was brought by some friend who stood forward in behalf of the boy against the man who had so defrauded him, and the directions which were given by the judge to the jury, were, to give the boy in damages the amount of the most valuable gem that could possibly have been placed in the setting, from which it had been removed.

Another case of presumption, is to be found in Peere Williams' Reports, *Dalton v. Coltsworth*. It was a bill filed against a man who had destroyed a deed under which the plaintiff claimed. The plaintiff claimed, under certain limitations, a real estate. The case was decided, I think, by sir Joseph Jekyll, then master of the rolls. The defendant had destroyed the deed, and evidence was given on the part of the plaintiff, of the limitations in the deed; but the evidence, as the witness had given it, was of limitations which could not by law take effect; they were the limitations of a term of years after an indefinite failure of issue: and the Court in that case said, that as against the man who had destroyed the instrument which would have shown what the rights of the plaintiff were, they would presume even what the plaintiff had not proved, and they would presume that the limitation was to take place after the failure of issue in the life of a person then in being. They did so presume, and the Court decreed the conveyance of the estate accordingly; presuming every thing against the party who had in his power the means of showing what the case was, and who had suppressed it.

There was a very recent case—I am still speaking of civil cases only—which came before lord Eldon when he was chancellor; it was a suit instituted between the executors of the late duke of Newcastle, and the executors of Mr. Jackson, who was the duke of Newcastle's steward. It was the duty of Jackson as the steward, and employed in various situations of trust for the duke, to have kept accounts in which it would clearly have appeared what his demands were against the duke, and the duke's against him. He had acted for him as law agent in a great variety of transactions. It so happened that Jackson had kept no account: he thought it a more advantageous thing to set up some great and general demand, without having his accounts to produce. When the case came before the lord chancellor, he was of opinion that the Court ought to presume, without any evidence whatever, from the mere non-existence of the accounts—which the steward ought to have kept, and to have produced,—all the demands which the steward had upon his grace had been satisfied, though there was not the least evidence of it.



The case happens to be reported in the eighth volume of Vesey's Reports p. 363; and your lordships will find the terms of the lord chancellor's decree in these words: "The order as drawn up by the lord chancellor himself, declared that under the circumstances of this case, it ought either to be presumed that the bills for business done by Jackson were paid, or, if not, that it is contrary to equity that any demand should be permitted to be made upon such bills against the estate of the late duke of Newcastle; it having been the duty of Jackson, as the agent, steward, and solicitor of the duke, to have kept for the benefit of the duke, such regular accounts of his receipts and payments, and dealings and transactions, as such agent, steward and solicitor, as would have enabled the representatives of the duke to know the true state and result of all such accounts between Jackson and the duke; and therefore, without prejudice to the effect of any bill that the representatives of Jackson may be advised to file, it was directed that the exceptions by the executors of Jackson should be overruled, and that they should stand as creditors upon the estate of the duke for the balance, in respect of sums received and paid by Jackson since the death of the duke, and by them since Jackson's death."

I have, however, hitherto only stated to your lordships civil cases; but, my lords, I am sure that no case occurs of any person convicted of an offence upon circumstantial evidence, in which the court does not act upon presumptions exactly of the same kind. I will put a case to your lordships; I do not know exactly when it has occurred, but it may have occurred; and that the decision would be such as that I am about to state to your lordships, I think there can be no doubt. I would suppose, that a man were indicted for the murder of another, and that there were no evidence against him but that which is called circumstantial evidence; that is, evidence of conduct or of circumstances, which cannot be accounted for upon any hypothesis but that of the party being guilty; I will suppose a case of that kind, and then I would ask your lordships, if evidence were to be produced, that the prisoner had destroyed the clothes which he wore upon the day upon which the man was murdered, whether a jury would not be directed to presume, or whether a jury would not presume that the clothes so destroyed had been stained with the blood of the man that was murdered, and that they had been destroyed only for the purpose of suppressing that evidence? If a jury would not be expressly directed to presume guilt from this, I would ask, whether the party's having destroyed the clothes he wore upon the day on which the man was murdered, would not be considered as most material evidence in such a case? And whether it could be evidence, in any way but that in which I have stated, that it must be presumed that no inno-

cent man would have destroyed that evidence, which would have contributed to his acquittal if innocent, and could contribute to his conviction only if he were guilty? I do not say, that from that circumstance alone you would infer that a man was guilty of a murder; neither do I desire your lordships, from the single circumstance of all the vouchers being destroyed, to say that the noble lord was guilty of this criminal connivance in the conduct of Mr. Trotter, or that he was applying all these sums of public money for his own benefit: not from that circumstance alone, but from that circumstance coupled with all the other facts.

But it is not merely upon that presumption, that your lordships should act. I submit, that a man standing in the situation in which lord Melville stands, a public accountant, a trustee for the public, a man who had used part of the public money as he himself states, not for the purposes for which it had been placed, in his hands, but for some other purposes; I say it was peculiarly his duty to preserve his accounts; and that the destruction of his accounts and vouchers is of itself a crime which would alone be a just subject of impeachment.

My lords, these are all the observations with which I have to trouble your lordships. I have already trespassed a great deal too much upon your lordships' patience; I am extremely sorry for it, and if I had known how to have compressed what I had to say into a smaller compass, I would have done it.

*Lord Chancellor.*—In point of form I ought to ask (though I anticipate the answer) whether any other of the managers for the Commons, desire to observe further upon the evidence, before the noble viscount proceeds upon his defence? I rather collected, from the honourable manager, that the Commons had closed their case.

*Mr. Whitbread.*—Your lordship has most completely understood the intention of the Commons.

Adjourned to the chamber of parliament.

#### ELEVENTH DAY.

*Tuesday, May 13, 1806.*

The lords, and others, came from the chamber of parliament, into Westminster Hall, in the same order as on the first day of the Trial.

*Lord Chancellor.*—Gentlemen who are of counsel for lord Melville, you may now proceed upon the defence, and the lords will be pleased to give their attention.

*Mr. Plumer.*—It is now my duty, my lords, as counsel for my lord Melville, to open his defence. In proceeding to the exercise of which duty I am sure it will readily be believed that I must bring all those sentiments and feelings which such a situation cannot fail to produce.



My lords, whatever encouragement I may hope to derive from the great indulgence I have been accustomed most undeservedly to experience from your lordships; whatever confidence I cannot but persuade myself, I ought to derive from the strength of the cause which is intrusted to me; whatever reliance I may most assuredly place in the wisdom, justice, and impartiality of your lordships, of which every day's proceeding has exhibited so dignified and striking an example; still, my lords, it is impossible that I should not feel all the anxiety and responsibility which belong to a situation I am utterly unable to sustain.

My lords, it is impossible for me not to recollect for whom I have the honour to appear; what have been the stations, the great stations which that noble person lately filled; what is his present situation; and what must be the feelings and anxiety of himself, and all to whom he is dear at the present moment, looking to the final issue of this cause, which is to determine what is to be the close of a life devoted to the public service;—and what is infinitely more valuable to him than life itself—which is to vindicate the honour and character of the noble defendant, from the foul reproach under which he has so long, and I hope your lordships will believe, so undeservedly laboured.

My lords, the defendant has to encounter difficulties of no common magnitude; the charges against him have long lain upon the public mind, and they have been with cruel industry circulated and enforced. I hope, my lords, I shall not be understood in the least to allude to any thing that has been done by his honourable accusers.

He is called upon to answer, not for any malversation in those great departments of the state, to which all the energies of his mind, in times of the greatest peril, from foreign and domestic enemies were applied; but for all the minute details of an office, which, by the ancient usage and course of it, have been always committed to a subordinate, and upon subjects to which neither his natural habits, nor his other occupations could permit him to attend; and this, my lords, after the lapse of a long period of time, after the death of one of those subordinates; and when the other, in whom he had placed entire confidence, is brought forward by his accusers as a witness against him.

My lords, before the noble defendant had ever been heard in his defence he was condemned, and subjected to the most severe and afflicting punishment which an honourable mind could sustain. He has now the misfortune to have for his accusers, the knights, citizens, and burgesses, in parliament assembled, in the name of themselves, and of all the Commons of the United Kingdom,—a great and mighty assembly, and to whom every possible respect and veneration is due, armed with all the extensive powers and privileges

justly belonging to that great assembly, ably upheld and enforced, as they could not fail to be in the hands of the representatives to whom this great trust was committed.

My lords, against those representatives,—with all that professional and parliamentary knowledge and experience, all that the most splendid talents and eloquence, united with the most indefatigable industry and zeal, and a long acquaintance with the subject could produce; assisted too with every possible auxiliary aid, upon a subject of this nature,—he has to contend.

The accusatory matter is of great extent and variety, it is spread over several articles; the evidence, written and parol, has occupied your lordships for many days, and the matter of accusation has been pressed against him, not only in the able and eloquent speeches which opened and closed the evidence, but likewise in all the interlocutory observations which, according to the privilege allowed in a proceeding of this nature, have never failed to accompany every stage of the proceeding.

My lords, to all this it is utterly impossible, within any limits I could hope to have allowed me, to attempt to offer any defence or answer; added to which I have been alarmed with a declaration which preceded the eloquent address which your lordships heard when last assembled, and which I am persuaded was not meant to convey all that it might possibly by a misinterpretation of it, be supposed to import;—I mean, my lords, the declaration that the honourable managers, and, speaking of them, I presume, in their representative characters, that the Commons of the United Kingdom were now upon their trial.

My lords, I feel particularly anxious, that in the outset, this subject should be well understood. I am sure it was not the intent of the honourable manager, by that expression, in the least to trench upon your lordships' free and unfettered right of judgment upon the charge, without any reference to the quarter from whence the accusation comes. I am sure, my lords, it could not be understood to mean that the honour and character of the House of Commons, is in any respect implicated in the result.

My lords, I beg distinctly to obviate any misunderstanding upon this subject. It never was the idea of the noble defendant, it is not, nor ever was, of any one of his friends, that under the circumstances in which the transactions, now the subject of inquiry, stood when originally presented to the public, when it was clear that abuses to a considerable extent had been committed by somebody; and when all remained unexplained from the unfortunate circumstances which at that time prevented full knowledge and inquiry into the subject; before it had been ascertained to whom those abuses were properly to be attributed, whether or not, they were the authorized acts of the noble defendant, whether they had been done with his privity and



knowledge, and for his use, benefit, and profit:—while matters stood in that situation, my lords, undoubtedly it did become the Commons of the United Kingdom, the great representatives of the country, holding the public purse, and bound to superintend and guard against every abuse that related to the public revenue,—undoubtedly it did, if I may presume to say so, become the representatives of the people to put the whole into a train of inquiry; nor was that inquiry ever objected to: on the contrary, it has throughout every stage of the business, been courted and sought for. It was fit that the public, whose mind had begun to be irritated in a high degree upon this subject, should have the satisfaction of having the matter thoroughly and completely investigated, in order that it might be fully known whether the acts complained of, were attributable in any way to the defendant, or were without any privity, knowledge, or profit, on his part, the unauthorized acts of a subordinate, to whom the business of the office was intrusted.

My lords, I hope I may likewise say, without offence, that had the present course of inquiry originally occurred to that honourable assembly, I am quite sure that what did take place, would not have been allowed; I am quite sure that in a country like this, the proud and distinguishing feature of whose character and constitution, is the pure and impartial administration of justice, it never could have happened, that that great assembly collectively, or any one individual in it, should have conceived a wish, pending the inquiry, to violate the first principles of natural justice, which forbid the accused to be condemned or punished, until fully heard, and fairly convicted. Unfortunately, my lords, a different course of proceeding having been originally proposed, induced those steps to be taken in the first commencement, by which criminatory resolutions against the noble defendant were passed and carried up to the foot of the throne, productive of the most afflictive consequences to his fortune, character, and honour; by which he was precipitated from one of the highest offices of the state, and separated from his majesty's councils for ever; by which, though held to be only liable to a civil prosecution, he was yet, in the interim, subjected to all the consequences of the heaviest condemnation. Your lordships all know that a criminal proceeding was afterwards substituted in the place of a civil one. And, my lords, in the state in which that criminal proceeding is now placed, if it were orderly and proper, I am sure I might appeal to all the accusers, with a full assurance of their united sentiments, that if in the result that shall appear which neither did, nor could appear in any prior stage of the business—if it should ultimately appear after due inquiry, after every possible opportunity given to sift this matter to the bottom, after every obstacle has been removed,—particularly that which

prevented the principal witness being brought forward, to be publicly examined, after months and months have been allowed to ransack all the written documents that exist, by every possible means, to purge and to sift into the truth, to examine, and re-examine from week to week, from day to day, that witness over and over, and over again; after acts of parliament have been made to render him competent, and to open his mouth, and cause him to be fully and audibly heard in the face of the public;—if ultimately it shall appear to the full conviction and satisfaction of every body, that the case is directly the reverse of what it was once believed to be: I am persuaded it cannot be the wish of any individual, that the noble defendant should not have the fair and full benefit of this disclosure. And that if in the result it tends to show that the impeachment in its main character and feature, in the principal ground and foundation upon which it stood, in the main point of all, has been cut down and negated by the clearest testimony adduced even by the prosecutor himself; I am persuaded the Commons of Great Britain, will not find that they are in any respect implicated, or their honour or character in the smallest degree affected; if ultimately after such an investigation, a result favourable to the defendant should take place.

My lords, I am persuaded, that if no impressions of the kind alluded to, are to be apprehended from this topic, much less have I any thing to apprehend from (what I ought perhaps to apologize to your lordships for in the least adverting to) that most extraordinary course of unauthorized proceedings out of parliament, that most alarming outrage against every feeling of humanity and justice, which pending a criminal inquiry was allowed to take place, not in anonymous libels (which, however, swarmed in every daily paper) not in private, not in direct terms, weighing down the character of the noble defendant; but, my lords, in unheard-of proceedings, in assemblies convoked by the written requisitions of persons of high rank and station, couched by some singular accident, in exactly similar language, and addressed in every part of the kingdom, to call forth associated libellers, under the constituted authorities in each county; to utter against a defendant about to be brought upon his trial the most false, scandalous, and malicious libels, in popular meetings, where it was impossible he, or any one on his behalf, could be heard; and not only uttered, repeated, published, but, my lords, to the shame of all decency, carried up to the foot of the throne, and registered among the public records of his accusers.

My lords, I am persuaded, the impression which these proceedings will produce upon honourable minds, such as I have now the honour to address, will be a greater degree of caution in watching the accusation, in comparing it with the proof, and in obliterating every trace of prejudice, which may imper-



ceptibly have been impressed upon the purest mind, in order that it may be as far as is possible brought free and unbiassed to the consideration of this great subject.

I will now state to your lordships the course of inquiry which I propose to pursue; in submitting the answer of the noble defendant to the charges contained in the ten articles of impeachment. It would certainly have been competent to him, if he had been so disposed, or those who appear for him, to have addressed a distinct and separate answer to each article; a different course has been adopted on the part of the prosecution, and it is not the intention of the defendant to depart from it. It will be the means of very much saving your lordships valuable time, to pursue that course; and there appears to be so much of unity of subject, though extending over a very considerable period of time, that I hope no confusion in the consideration of it, especially before your lordships, is to be apprehended from consolidating the charges, and refuting them in one unbroken defence.

My lords, I shall also (with your lordships permission) follow the example set me particularly by the honourable and learned manager, whose able address your lordships last heard, by not attempting — what it would be quite impossible to effectuate—to travel through the immense mass of written and parol evidence, and the various criminatory topics that have at any time been introduced in the course of these proceedings, but I shall rather follow him in the topics which he has selected for accusation. He has with great candor stated to your lordships those were the points meant to be pressed against the defendant, which he has distinctly stated himself to have thus selected, for the purpose of calling the defendant's attention to them, thinking as he very humanely and honorably said, that it was fair and just to the defendant to draw under his notice those points of charge to which he was expected to address his defence. I hope, therefore, that neither on the part of the managers, nor, I am sure, on the part of any one of your lordships, will any inferences be drawn to the disadvantage of the defendant, if I should omit to notice other points of less importance, that have not been thus pointedly pressed and relied upon.

My lords, I cannot but feel a considerable degree of anxiety on this subject, after what has already happened; when in more than one instance the conduct of the counsel has, in a way not very usual in a criminal case, been endeavoured to be transferred to the defendant; I feel particularly anxious, that in this instance any omissions and defects of mine, infinitely numerous as I know they must be, should not be suffered in any respect to afford any matter of unjust inference to the disadvantage of the defendant.

The general subject presented to your lordships by the ten articles of impeachment, divides itself into two general heads. Two of

the articles, the first and tenth, relate solely to matters that preceded the statute of the 25th of the king, and must therefore be considered with reference to the then state of the law and the office in question. The other eight articles relate altogether to matters arising posterior to that act of parliament, and therefore involve all the questions that can result, not only from the consideration of the law as it stood antecedent to that period, in what it was not altered by that act, but also from all the new obligations which that act of parliament has created.

In the two articles, the first and the tenth, which are in *pari materiâ* upon the same subject, and at the same period; in these two articles the sole charge against the defendant is a corrupt appropriation to his own use, or to other corrupt purposes, or to other than the naval services of the public money imprested to him as treasurer of the navy; the continuing that appropriation posterior to the passing of the act of parliament; and, in the first article the declaration made in the House of Commons upon the subject of it.

The criminatory matter is in the second article described as a breach of the act of parliament considered abstractedly, without reference to the use made of the money withdrawn from the Bank and deposited at a private bank. The mere act of removing it from the one place to the other, independent of all reference to the corrupt or improper use of it, being in that article stated as a criminal offence, a wilful violation of the act of parliament, a breach of duty, and an high crime and misdemeanor.

My lords, in all the other seven articles the corrupt use is united with the charge of withdrawing it from the Bank for private profit and emolument. Your lordships will observe, that in the articles it is left a little vague and loose, without stating for whose private use and emolument, a generality throughout that could hardly have escaped observation, or arisen from inadvertence. In addition to those charges, there is contained in one of the other articles a charge, not indeed a distinct one, but which I now understand is meant to be relied on as constituting a distinct offence, viz. The charge of having destroyed vouchers; which is stated to be in a public accountant itself a crime; besides affording the inferences of criminality and guilt which have been drawn from it, in aid of the charge of corruption. My lords, these I believe form the general outline of all the articles which are now before your lordships.

I shall, in the first place, address myself to the two first articles, the first and the tenth. In the first article the charge is, "that the defendant took and received from out of the money imprested to him as treasurer of his majesty's navy, from his majesty's exchequer, the sum of 10,000*l.* or some other large sum of money, and did fraudulently and illegally convert and apply the same to his own use,



or to some other corrupt and illegal purposes; and to other purposes than those of the public navy services of the kingdom, to which alone the same was lawfully applicable;" that he continued this posterior to the act of parliament; and that the defendant has declared that he never would reveal the application of this sum; and, in particular, made such a declaration in the House of Commons on the 11th of June, 1805, and stated the motives by which he conceived himself to be induced to make that declaration to be motives of public duty, private honor, and personal convenience. The article then states all this to be contrary to the duty of his office, a breach of the trust reposed in him, and a violation of the laws and statutes of the realm.

Your lordships will observe, that the period of time when this is stated to have been committed was previous to the 10th of January, 1786, the day when the operation of the act of parliament commenced, the statute of 25th of the king relating entirely to money issued from the Exchequer posterior to that date.

Now, my lords, upon the subject of corruption imputed to the noble defendant, I beg your lordships in the outset to understand me explicitly, on his part, to declare that he entreats of your lordships the most vigilant, the most scrupulous, the most rigid inquiry into the whole of his conduct;—whatever irregularities, whatever imprudence, whatever negligence, whatever of blame may lie at his door upon any other subject, *upon that subject he pleads not guilty*,—UPON THAT SUBJECT, MY LORDS, HE ENTREATS OF YOUR LORDSHIPS THAT HE MAY EXPERIENCE NO FAVOR OR INDULGENCE WHATEVER. If it shall be discovered that in any instance the mind of the noble defendant has been corrupt; that he has in any one instance violated his trust for the sake of money; if he has ever lost sight of his duty in pursuit of money for his own profit and gain, he entreats of your lordships that he may have no indulgence, but that he may receive from your lordships that sentence and condemnation, which, however, being pronounced against him, will be worse than death itself. But, before that sentence is pronounced, I am sure your lordships will weigh the matter well, will carefully compare the charge with the proof throughout, will be disposed to make every proper allowance for the difficulties that must attend the defence, for all that from the length of time may elude the possibility of exact and minute investigation—all that from the death of witnesses, or from the inability to trace and examine the subject, may still remain not entirely cleared up. If your lordships shall find, that all that looks like suspicion of corrupt conduct is fairly referrible to another cause,—considering what was the situation of the noble defendant, what his various occupations, what his natural character, what the general habits of his life upon money matters in particular, and how easily with respect to him, much of what in others

differently circumstanced would appear unaccountable,—much which, in the case of a private unoccupied individual, might afford matter of just observation, might yet be consistent with the purest innocence. What are the sentiments and principles of the noble defendant, your lordships will throughout bear in remembrance, do not rest in evidence of general character, or in loose assertions, but in that which is proved on the part of the prosecution by every witness, and every piece of evidence that has been produced, to have been the natural habit and true character of the defendant. And here, my lords, upon this subject I must do justice to the candour of the honourable manager who opened this charge, and who frankly and fairly stated to your lordships, that the sordid imputation of avarice never for a moment, in the mind of any man, alighted upon the head of the defendant:—Nay, farther, my lords, the honorable manager, he who had certainly possessed, and as certainly employed, the best opportunities of looking through his whole life, of examining into all the history of it for the last twenty-four years, and following him through all his private accounts with every banker, and every agent, public or private, with whom he had ever any dealings—in every item—in every paper—in every book that can be traced to give the history of his pecuniary concerns—with most laudable industry, with indefatigable zeal, for months and months, he has fairly given to your lordships the inference arising from all his labours. To use his own language, "the result (he says) of all my inquiries into his private affairs is, that I believe him to be a man of a generous spirit upon money matters." I hope, therefore, it will be remembered that your lordships are considering the conduct of a man, who, if he has departed from that line and spirit of conduct, in any part of these proceedings that are the subject of inquiry, has done it for the first time in his life; that he has wholly departed from his natural character, and that he has forsaken all that every one acquainted with him knows to have been the darling objects of his life, the estimation of his country, his fame, his reputation, and his honor; that he has sacrificed all for the sake of what never was an object of desire, never his ruling passion, never a pursuit that it entered into his mind to contemplate. His disregard of money, unfortunately for himself and all his private concerns, is matter of perfect notoriety; his present situation, and the known state of his private fortune, exhibit the most decisive proof of it. Yet he must be supposed, if corruption is fastened upon him, to have been guilty of this dereliction of duty, for the sake of that which never formed an object of attention to him, in any period of his life—and at what period is he supposed to have done this? Was it when the mind would naturally have been disposed to devote itself to such an object? No, my



lords, directly the contrary; it is supposed that one, bred with the feelings and education of a gentleman, placed in the situation most calculated to elevate the mind, descended to the meanness of the most dishonorable and degrading prostitution of his character, for money. What were the stations which he filled at the period when he is supposed to have formed and executed these plans of corruption? At a period the most eventful of our history, it is well known the defendant filled the highest departments of the state; that the care of our Indian empire was committed to him as president of the board of control, then newly established, and at the same time united with it the office of secretary of state for the home department, in times of the greatest domestic peril: and afterwards for the foreign department, when the war broke out with France, and all the affairs of Europe were cast upon him: Surely, my lords, if, under these circumstances, concerns of less magnitude should appear to have been altogether neglected—if, in the private affairs of one never accustomed in his life to figures or accounts, there should be found the marks of what might be termed the grossest inattention and neglect—if he should have altogether committed such concerns to others—if he should never have been brought to give his mind or attention to them, steadily intent upon, and wrapt up in the great public concerns intrusted to his care, surely, my lords, no candid mind would be at a loss to account for such conduct, without any inferences unfavourable to the honour and character of the defendant. In discussing transactions of a more ancient date, your lordships will not expect that I should be enabled, after the lapse of twenty-four years, when the principal agent by whom they were conducted is dead, to be prepared with a detailed defence to cover each distinct item in a banker's book, and to explain how it happened, that at one particular time his account was overdrawn at his banker's, or how, in the mixture of accounts between his paymaster and himself, the Bank-notes belonging to one were transferred to the other. In more recent transactions, which admit of a more correct and distinct investigation, where the agent is living, from whom an account of the transactions in charge can, though not without considerable disadvantages, yet with somewhat of more certainty, be got at, I trust your lordships will receive more satisfaction.

I proceed now to the charge in the first article, respecting the misapplication of ten thousand pounds, and the declaration concerning it in the House of Commons.—I deny that lord Melville has committed any violation of the duty of his office of trust, reposed in him; or of any law or statute of the realm. It is admitted that this transaction took place at a period when there existed no law whatever, respecting public money imprested to the treasurer of the navy, restrictive upon the

place of deposit. I insist farther, that there existed no law, either common or statute law, restraining the use of money so imprested, and that whatever obligation existed upon the subject, beyond the rule of official duty, resulted from the compact made with the king; the implied compact resulting from the warrant, by which an annuity, as an addition to the salary was given, from the year 1782, to the treasurer of the navy.

Now, my lords, I beg again, that upon this subject I may not be misunderstood, I hope your lordships will not, when I am about to discharge my duty, in examining the correctness of the allegations made as to the state of the common law, antecedent to the passing of the act, and as to the construction and operation of the act upon this subject, I hope your lordships will not therefore think, that I am flying from the charge of corruption, and taking shelter under a legal argument. My lords, I distinctly avow, on the part of the defendant, that he was under an obligation, an honorable obligation, an obligation of compact, an obligation of agreement, equally powerful upon an honourable mind, to abstain from making use of money imprested to him as treasurer of the navy, for his own profit and emolument. Let it not, therefore, be understood, that I mean to deny the existence of such an obligation. I only wish it to be ascertained what was the sort of obligation that existed. I contend, that independent of the compact resulting from the warrant, and as the law stood prior to it, there was no rule of the common law, no statute, no duty of any kind, legal, official, or moral whatever, that precluded the treasurer of the navy, or any other officer of a similar description,—provided he is at all times ready to answer the public exigency, and to apply the money imprested to him, when wanted, to the purposes for which it was destined,—from making the freest use of money imprested to him, in the mean time, and when it is not wanted for the public, to every purpose not criminal, to every purpose of profit, emolument or advantage, that can be stated, not only without incurring any criminality or punishment whatever; but likewise without, in the smallest degree deviating from the pure and honourable discharge of the duty of his office, and the trust reposed in him.

My lords, I am aware that upon this subject, I am taking up the gauntlet thrown down by the honourable manager, who, with so much ability opened these articles. I am aware that he has distinctly and ably argued that antecedent to the resolutions of 1782, antecedent to any statute upon the subject, by the common law, a public officer of this description could not apply money imprested to him, even for a time, or when not wanted by the public, to his own use; that the resolutions of the House of Commons, of June, 1782, only recognised the law as it antecedently stood: and the honourable and learn-



ed manager who has summed up the case, although he has not in terms pointedly repeated the same doctrine, yet the course of his argument throughout assumes it, and particularly that part of it which relates to the declaration made by the defendant in the House of Commons. In that animated and impressive address which the honourable and learned manager, with so much eloquence, pressed upon your lordships in enforcing the criminality of that declaration, he stated it to have been made by a public accountant, that (as the honourable and learned manager said) in the sanctuary of liberty, the defendant had daringly and openly avowed the right to conceal what use he had made of the public money, that such declaration was alarming to the constitution, claiming, on the part of a public officer entrusted with the public money, a right to make those uses of it which might be destructive to the liberties of his country, and this he had dared to utter in the sanctuary of liberty.—My lords, all these arguments would equally have applied to the case of any one who had made a similar declaration in the sanctuary of liberty, at any period as well prior as subsequent to the passing of the statute; upon the same general principles it was equally at all times fitting that the public money should be reserved for the use to which it was ultimately destined, without a right of temporary and intermediate use. If it be dangerous to the constitution to allow any individual to possess an unlimited right of applying public money imprested to him, to all purposes public or private, it was undoubtedly at all times dangerous. The same course of duty was uniformly prescribed at all times, to the paymaster of the army, the treasurer of the navy, and all public officers and accountants to whom money was imprested for ulterior purposes, and the same danger and guilt must attach whenever the public money whilst in their hands, is made use of by them for any purpose of temporary profit, before it is wanted for the public service. The arguments of the honourable and learned manager, would equally apply to prohibit and condemn such conduct universally, antecedent to any positive statute upon the subject.

My lords, it is necessary therefore to consider how far these arguments are well founded; and notwithstanding the length of time that this doctrine has been suffered to pass current with the public, I do not shrink from the consideration of it; and with your lordships' permission, I trust I may be allowed to say, in this great assembly, and well knowing before whom I speak, that upon this subject there is not, there never was one particle of doubt respecting the law; that the whole argument, on the part of the prosecution, is founded on mistake—that what has been contended for by the managers, is not the law; that it never was before declared to be the law, and that the direct contrary has been stated to be the law, not only universally stated in every book,

in which any thing is to be found upon the subject, but likewise openly, publicly stated in that very sanctuary of liberty, stated repeatedly by one who may be considered the highest living authority in that great assembly, in the most distinct and positive terms that language can convey, and under circumstances that indicated the most decided and deliberate conviction.

My lords, as we are now travelling back, and led by these arguments into an historical review of what passed in the year 1782, when subjects of this nature were brought under the consideration of parliament; as your lordships are called upon by these articles in a most novel and extraordinary manner, to infer breaches of law, not from acts of parliament, not from the common law, but picked up from the reports of commissioners, from the resolutions of one house of parliament, which with all the deference that belongs to them, do not and cannot constitute the law of the land:—My lords, when this is the case, I trust it may be allowed me to accompany these inquiries with a contemporary history of what is stated to have been the proceedings of parliament, at the period referred to in the preamble to the articles of impeachment, and upon the subject on which your lordships are called upon to pronounce your judgment.

My lords, the preamble to the articles, and the honourable manager who opened them, stated that subsequent to the conclusion of the American war, the public accounts of the kingdom invited public attention; that the great expenditure of public money had created an attention to public economy; that the subject was referred to commissioners of public accounts. The resolutions of the House of Commons, and the acts which subsequently passed are presented to your lordships' consideration; but a most extraordinary and singular account of these proceedings is given in the preamble to these articles. Your lordships will find detached and particular periods fixed upon, and parts of the proceedings only extracted, whereas if the whole subject which was brought before parliament at different periods is fairly looked at, it will be found to afford a conclusion directly opposite to that which from the very same sources your lordships are desired now to draw.

My lords, it appears by the journals of the House, that upon the 11th of June, 1781, the then minister submitted to the House of Commons, what should be done consequent upon the reports of the commissioners of accounts. My lords, upon a subject of this nature I hope that, without any irregularity, I may be permitted to refer to those contemporary historians of the proceedings in parliament who have recorded the discussion of that day, as being authorities sufficiently correct for this purpose. My lords, upon that occasion, the subject had created a considerable degree of ferment. It appears upon the report of the commissioners, which the honourable mana-



gers have given in evidence, and which stands upon your lordships' minutes, that very large balances were then in the hands of public accountants who had long gone out of office. It is not necessary to state all the particulars—I observe that at one time, one noble family had had from the year 1719 and 1720, a very large sum of more than 300,000*l.* of which no account had been given; that another noble lord whose representative was then in the House of Commons, who went out of office in 1765, had carried with him a balance of about 300,000*l.* and had ever since been in possession of it. It appeared, I think, that the total of the simple interest made of that balance by that noble lord, had been between two and three hundred thousand pounds. Upon that occasion the executor of that noble family,\* who was then a member of the House of Commons, in his own manly and energetic way, upon the very point we are now considering, ventured to make a public declaration in this “Sanctuary of Liberty.” Did he say that he was bound to declare what was done with the public money? Did he say that as a public accountant, he was bound to come forward with the large sum of which the balance consisted, the sum at that time reported by the commissioners being 450,000*l.* in the hands of the family whose executor he was? My lords, in the parliamentary history of those times, this right honourable gentleman is related to have declared in the manly and decisive language, for which he is so distinguished, which he has never since disavowed, and which, not upon this occasion only, but in subsequent debates was repeated, “Lord Holland, he was willing to confess, and indeed it was useless to deny it, made advantage of the public money, while it remained in his hands. And here he was ready to throw down his gauntlet, and to argue it against whoever maintained a contrary opinion, that if a public accountant held himself able at all times, without possibility of check, or prevention, to produce the whole of the public money in his hands, whenever he was called upon so to do; it was in that case, a matter of perfect indifference to the public, whether he used it for his own advantage or not.”†

Now, my lords, had the honourable and learned manager, the ornament of his profession, who exhibited such proofs of his eloquence upon this subject, been a member of the House of Commons at that time, I presume he would instantly have started up, and, in his own indignant language, have arraigned the declaration of his right honourable fellow manager. “How dare you, a public accountant, in this sanctuary of liberty, to ad-

vance so alarming a doctrine? You have thrown down your gauntlet in bold defiance, and insist upon it, whoever shall maintain the contrary, that you have an unlimited right of the use of the public money, to every purpose whatever, and this not in respect of a sum of ten thousand, but in respect to a balance of between three and four hundred thousand pounds and indeed a balance to any extent.”

My lords, did this declaration provoke any one in that great assembly to take up the gauntlet, and dispute the doctrine thus advanced? It did not pass unnoticed; in the same account of the proceedings, the minister of the day,\* one of no mean talent, nor of light experience, then at the head of the board of revenue, and having recently this subject under his consideration, is stated to have adverted to this declaration of his political opponent, not for the purpose of *controverting* but of *confirming* his opinion, “With regard” (he says) “to the position laid down by the honourable gentleman who spoke last, that if a public accountant, was at all times ready to produce and pay in the full amount of the public money in his hands, it was a matter of indifference to the public, what use he put it to, if it was ready when it was called for—he was ready to admit it.† Thus, my lords, did two of the most distinguished members of the House of Commons, who at that time never agreed upon any other subject, upon this, unitedly concur in admitting the law on this subject to be the direct opposite of what it was stated to be by the honourable manager; and upon the ground of which he requires your lordships to support this article of impeachment. My lords, we have heard a great deal said of the opposite conduct of one great personage, the head of a noble family, whose illustrious descendant‡ has lately been taken from us—the great earl of Chatham, who (when paymaster of the army) made no use of the money imprested to him, but deposited it in the Bank; I observe in the debates alluded to, the same distinguished person§ to whom I have referred, gives his opinion upon this subject: “The late earl of Chatham, he says, it was well known, and for which he neither blamed him nor was ready to say he greatly admired him—did not make a shilling advantage of all the public money that lay in his hands; the whole was placed either in the Bank of England, or at a private banker’s.”|| So did that great statesman think even with respect to this conduct so highly extolled as a model; though he did not blame, yet he did not greatly admire it; nor indeed was it a subject of particular admiration, because, however magnanimous it may be, yet unquestionably if the use of the

\* Charles James Fox, one of the managers for the Commons, and his majesty's principal secretary of state for foreign affairs, at the time of this trial.

† 22 New Parl. Hist. 427.

\* Lord North.

† 22 New Parl. Hist. 433.

‡ William Pitt.

§ Charles James Fox.

|| 22 New Parl. Hist. 427.



public money constitutes the fair emolument of office, it is just as laudable, it is just as proper for any public officer to make use of it as it is for any great magistrate or other person, having a lucrative office in his gift, to give it to one of his family, or dispose of it to his advantage in some other way, without making a present of it to the public, or abandoning the right that he and his predecessors have constantly enjoyed.

This same subject came under discussion in the following year, at the period when the resolutions quoted in the preamble of the 18th of June, 1782, were first proposed,—proposed not as the honourable manager stated, as declaratory of an antecedent law, but as expressive of what ought to be made law in future; they were brought in by the minister\* of that day, during the latter part of lord Rockingham's life, and he at the time stated that the lateness of the session prevented the adoption of any parliamentary measure consequent upon the report of the commissioners, and therefore these resolutions were introduced for the purpose of pledging parliament to their adoption, by a subsequent act of parliament; the ministers then pledging themselves in case they continued in office, or if they did not, pledging their successors to resume the subject in the ensuing session. Your lordships remember a new series of events by lord Rockingham's death soon succeeded, and when parliament met again the new ministers had something else to attend to, and in fact, these resolutions never were after that time resumed, or acted upon by parliament and yet are these resolutions now selected and introduced into this preamble to the articles of impeachment, and your lordships are desired to consider them as constituting the written law of the land, and the violation of any one of them as a public offence.

My lords, upon the occasion of these resolutions being brought under the consideration of parliament, the subject before stated was again resumed; and we find the same distinguished person, to whom I have already alluded, resuming the subject, not in a declaration made suddenly, or in his own defence, but after he had had twelve months to reconsider the subject, in the month of June, 1782, again repeats his former sentiments, "In the first place he contended *as he had often done before*, that when a balance of public money lay in the hands of a public accountant, all the public had a right to expect from him was, that whenever the money should be called for, it should be forth-coming, and what he did with it was nothing to the public, provided he had it always ready to answer the calls of the public."† There, my lords, was again an impeachable offence committed by

this right honourable gentleman in the "Sanctuary of Liberty."

But, my lords, he was not singular in this opinion. It appears that the attorney-general of that day\* proposed various resolutions to the consideration of parliament in a day or two after, viz. on the 25th of June, in the same year; the subject of the balances in the hands of public accountants, was again considered: the attorney-general, who was particularly alive to a subject of this nature, proposed, what? not that any of the accountants who had employed the public money to their own use should be indicted as offenders; all that he could bring himself to propose, was, first to examine into the state of the balances of those who were out of office, and in the next place, that such persons should be called upon to pay interest of the balances in their hands, from the time of their quitting office. The subject was considered by parliament, assuming that interest had been made, assuming that the free use and possession of the money was in the hands of those accountants, or laid out by them for their own benefit, and all that was proposed to be claimed was a civil right in the Crown to call for interest, under the above restriction. The voice of parliament was however so clearly against the proposition, and all sides of the House so decidedly adverse upon this abstract question of civil right, that the attorney-general, who brought in the resolution, was obliged to withdraw the resolution; and the right of the public to demand interest for the large balances then in the hands of the public accountants, even after going out of office, was abandoned and given up. In the course of the debate, it having been stated that the crown had by law a right to interest in these cases, a great and distinguished lawyer of that day, to whose opinion I am persuaded such of your lordships as are acquainted with the profession, will pay the highest respect, I mean Mr. Wallace, stated, in his place "he found no difficulty in declaring on the question of the right which the public might have to the interest arising from the public money in the hands of the great national accountants, for his own part, he felt no difficulty whatever in declaring that the public had no such right, and he believed that he should not be found singular in his opinion among the gentlemen of the long robe. It was a clear maxim in law, that whatever party received the profit, that same party ought to bear such losses as might befall that property; that if the public should take an interest on this balance, the public ought in justice to put up with whatever loss should happen from failure of security—but was this the case?—not at all—the public had nothing to do with the losses; the accountant was responsible for the whole of his balances; he had a right to any profit he might make of the money, but he must answer for any defi-

\* Lord John Cavendish.

† Vide Mr. Fox's Speech in the House of Commons June 18, 1782, 23 New Parl Hist. 117.

\* Kenyon.



ciency."\* My lords, I forbear to state to your lordships, the other proceedings in which the same opinion as to the right appears to have prevailed on all sides, upon the discussion of the subject: no idea of imputing criminality to the use of the public money, no idea of danger resulting to the constitution, or public liberty, from leaving large sums in the hands of public accountants, and allowing them the free use of these balances, ever entered into the head of any individual in that "Sanctuary of Liberty;" on the contrary, a distinguished member† who had lately filled the office of treasurer of the navy, and whose balance I think then was 348,000*l.*, publicly declared in this place in the House of Commons, that, "If the balance had been ten times greater than it was, the ancient practice of the office, would justify him in making as much advantage of it as he could."‡

Such, my lords, were the sentiments, which prevailed upon the subject at that time, and they were not confined solely to the offices before mentioned. I observe in the account of the proceedings upon a similar subject, in respect to another office, one that I believe to this day remains unaltered by any statute, or by any resolution: I mean the balances in the hands of the receivers general of the land tax, who receive money under circumstances very different from those attending the balances we are now discussing. A receiver general of the land tax, receives the public money before it has got into the Exchequer, and every hour of delay in its transit, while it rests with the receiver, is a direct loss to the public. Yet even with respect to these officers, when it was proposed to make them responsible; and when, to enforce that which the annual land tax act directs, viz. that within twenty days they shall pay up their balances, the minister of the day proposed that the receivers general should be compelled to pay their balances, a right honourable person, then a member of the House of Commons, now a distinguished ornament of your lordships' house, rose up in his place, and had no scruple to argue directly against the proposition, stating the hardship of it, the injustice to compel an accountant to pay in his balance, and particularly that in the county with which he was connected, by arithmetical calculations he showed that if the proposed measure should pass, the place of a collector of the land tax would not be worth 15*l.* a year, and consequently no man of character would undertake the office; this was in the proceedings of the 20th June, 1781. Now did it appear to that noble lord that there was any thing dangerous to the constitution, or contrary to the nature of their trust, to allow these accountants to have this public money in their hands, and to make use of it for their own benefit? on

the contrary his lordship complains that unless they were allowed to continue in the enjoyment of such a privilege, no man of character would take the office: plainly intimating that it was not in his opinion inconsistent with the character of a man of honour, to hold the office and continue to use this privilege.

Another noble person observed on the same occasion, "that let the salary of the collector be what it would, still the employment would be lucrative, for most of the collectors were bankers and turned the money to private advantage while in their hands; and such as were not bankers, placed it in the hands of bankers, and got such a premium for so doing, as was greater than their salaries."

My lords, I beg I may not be misunderstood upon this subject, or supposed to be arguing against the validity or the operation of the warrant. I have expressly reserved that consideration, and only for a moment request your lordships to consider how this matter stood, independent of the warrant, and the act of 25 Geo. 3rd? that neither from the common law, nor from the nature of the official duty or trust, was any obligation restraining a public accountant to whom the public money was imprested, from making a temporary use of the money, before it was wanted for the public service; and when properly considered the point is too clear to want any authority upon the subject. For independent of any compact or statute it is clear that the nature of the duty of a treasurer of the Navy, or other similar officer, prescribes no such restriction. A treasurer or a paymaster, or any other person to whom money is imprested for a particular service, unless he is limited as to the time in which he is to pay it over (and then to delay it is an offence), but if he is not, what is the result? why that he becomes a public debtor to the amount of the money placed in his hands. A great deal of fallacy has arisen from supposing the deposit of money, to be the same as the deposit of a personal chattel; in respect of which latter there is always an obligation to restore in solido the identical article deposited. Whereas when money is deposited, no such obligation exists: the money is the depository's own, he is liable to be proceeded against as a public accountant, and bound by the nature of his engagement to be ready at all times to answer the current demands of public service, punctually, honourably, and faithfully whenever he shall be called upon; he is bound also to keep himself in a situation to be capable of doing that: but provided he does so, he fulfils all the engagement which he enters into by the nature of his office.

My lords, this is plain sense. This is distinctly stated, by the high parliamentary authorities I have quoted, to be the nature and extent of the obligation imposed: it is of some consequence that this should be distinctly understood. If it be a crime for a public officer

\* *Vide* 23 New Parl. Hist. 130.

† Mr. Welbore Ellis.

‡ 23 New Parl. Hist. 131.



to use balances in his hands for his own profit, independent of compact, independent of statute, at the common law a breach of duty and trust, and a violation of moral probity and honour, I can only say, the most honourable families, the most respectable persons in the kingdom have spent their lives in a constant violation of the law, in a constant transgression of duty. If there was any thing in the act contrary to moral duty, if any thing inconsistent with the principles of the constitution, the noble family to whom I have alluded,—hitherto uncontaminated with any such imputation, though exposed to much of unjust obloquy at that time, on account of the large balances in their hands,—as well as all the most distinguished and honourable persons, who have filled offices of this description at all times, have all incurred this heavy guilt. Your lordships have before you the examination of one member of a noble family, upon whose purity and unspotted honour, the breath of slander never cast the least suspicion: I mean the representative of the late Mr. Grenville, of whom it is recorded upon your lordships minutes, that on his examination before the commissioners of accounts in 1781, he desired two months time to pay into the Exchequer, the balance due from his late father as treasurer of the navy. Why require that time if the money was lying at the Bank unused? why could not he pay it in two hours? why because two months were necessary to call in the money, from the securities on which it had been laid out, for the benefit of the family. Would these noble persons have done any thing inconsistent with any principle of moral honesty, or the most conscientious regard to the nature of the duty and trust reposed in them?

It is certainly not immaterial to carry these principles into the consideration of the whole subject before us; because we are perpetually weighed down in the consideration of it, constantly referred, though not always avowedly, to a supposed antecedent law, duty and trust that created obligations different from what has been in all former times universally understood, in and out of parliament, to be the existing law; and what I humbly conceive must be acted upon as the law, if the question should arise in any other court of justice. If, for instance, an indictment were to be preferred against a receiver of the land tax, for making use of the public money for his advantage, it must be contended upon the principles advanced on the part of the prosecution, that such an indictment might be sustained, and *a fortiori* in that case, because keeping the money in his hands retards the progress of it into the public coffer; whereas in the present instance, it is a balance not wanted by the public, remaining necessarily dead, and the only question is whether it shall remain dead; locked up in a drawer, useless to every body or be made beneficial to the individual, before it is wanted for any other purpose.

My lords, if I have succeeded in showing what the law was in 1782, I submit with great deference, that, in respect to the use of public money, the law has since undergone no change whatever, further than as in the case of the treasurer of the navy, it may be affected by the warrant, which is a question I shall presently discuss. As to the statute of 25 Geo. 3rd. it might be enough to state with respect to the declaration in question, that it relates to a balance incurred prior to the statute, and to which nothing in the statute applies. But, my lords, I might go a step further, and say, that even the 25th of the king so much relied upon, upon the subject of the use of public money, is wholly silent, and imposes no negative upon the right of the treasurer to make that use. If the true construction of that statute were, what the managers have contended it is, no such provision could have been introduced therein; they contend that the true import of the act, is, to impose a larger negative in respect to the public money, by preventing the transfer of it to any other place than the Bank of England, and the pocket of the public creditor; and excluding the treasurer from ever possessing any part of it. This may be said to comprehend a prohibition on the use, and in that way I do not deny that it does, if such were the true construction and effect of the act, which however I shall hereafter show it is not; but all that I mean at present to state, is, that there is no definite, no distinct and positive prohibition upon the treasurer's use of the public money, as a statutable regulation prescribed by that act: that it does not purport to take up the resolutions of 1782, or to adopt the provision therein contained on this subject which in distinct and positive terms, had proposed to negative the right to any such use directly or indirectly. The statute has upon this subject left the law precisely as it stood before, save and except as it may be included in the regulations with respect to the transfer and deposit of the public money, which I shall have occasion to consider hereafter.

But, my lords, the declaration charged as a criminal act in the first article, respects a balance of 10,000*l.*, which was a balance of an ex-treasurer's account, arising prior to the act of parliament.

It appears, my lords, in evidence, that it was a balance which at that period of time, was not wanted for the public service; nay, my lords, it further appears that not one farthing of this balance ever was called for, or wanted down to the time when the whole of it was paid into the Exchequer; it therefore was not only money that was not wanted, but money that could not have been made use of by the public. It is in proof before your lordships by the officer of the Exchequer, who was examined on this point, that the treasurer was to hold this money, together with whatever other balance he had as an ex-trea-



surer, being liable to be called upon from time to time to pay demands of assigned bills, seamen's wages, and various other contingent demands; the period when such demands should be made, being altogether uncertain, and he being bound to the full extent to keep this balance in his hands for the purpose of satisfying them. That by the constant usage of the office, that balance was never paid over into the hands of the public until the accounts were passed.—The usage of the office was so, as I have shown your lordships, to a very large amount. From the year 1765, down to the year 1781, the large balances I have stated, were in the hands of one noble family, and it was expressly contended by their representative in the House of Commons, that not one shilling should or ought to be paid till the accounts of lord Holland were passed: that they had a right to have their *quietus* before the balance was parted with. Instances have occurred in which parliament has interposed, to call for the earlier payment of balances which had been long in the hands of treasurers and paymasters out of office, when perfectly satisfied that from the length of time, there was no chance of any further demands upon them: but whenever that was not the case, the accountant in general was left to pass his accounts in the ordinary course, and when he had passed his accounts, and not before, to transfer whatever balance remained in his hands.

My lords, the declaration in question respects a balance of 10,000*l.*, that stood in that predicament. The ex-treasurer was in respect of this balance, under no obligation legal, moral, conventional, or otherwise as to the place of deposit: he might have placed the 10,000*l.* in any drawer of his house; he might have left it with any friend; he might have deposited it in any private bank, or wherever he thought fit; his only obligation was that which arose from the warrant by which an annuity was granted to him by the king in lieu of all emoluments enjoyed by his predecessors, from whence it may fairly be argued, that he was by the nature of his agreement with government, impliedly precluded from the emolument derived from making profit of money in his hands. I have already admitted that he was under such obligation; but with great submission to your lordships, I deny that the breach of such a compact, had it been committed (which I also deny) could have amounted to a public crime or offence. When there has been the grant of an annuity, upon a condition implied or expressed; the violation of that condition unquestionably will subject the party to civil consequences. In all cases of grants from the crown, if a patent for instance, or any other thing is granted upon condition, the violation of that condition undoubtedly subjects the party to the forfeiture of his civil right; it exposes him to civil process, a *scire facias* may issue to repeal his patent, and he becomes

liable for all the consequences of a violation of his contract with government; unquestionably in the case of grants, from one subject to another, the breach of a condition creates no crime; neither does it, in case of a breach of a condition annexed to a common grant of the crown. I do not say there may not be some difference in the case of a warrant augmenting the salary of office: it must however be remembered, that the duties of the office were not thereby altered, though the pay was increased; the duties therefore remain to be collected from the patent, and the nature of the office. But what I wish to establish at present is, that the creation of such an obligation does not necessarily constitute the law: that it cannot be pronounced afterwards to be the common law of the land, nor be the foundation of a criminal charge. It is further to be observed, that, at all events, whatever be the nature of the obligation, it can only be coextensive with the instrument creating it; that it ceases when the treasurer goes out of office, and can have no effect, or operation upon him, for all that he does whilst an ex-treasurer, or for any balance duly retained in that character. This was precisely the situation in which the noble defendant stood with respect to this balance.

Suppose, my lords, the noble defendant had not been appointed a second time treasurer of the navy, his situation in respect to this balance of 10,000*l.* would have been the same as it was then; he was not an officer *quoad hoc* at the time he made the declaration in the House of Commons; he was an accountant liable at all times to account whenever the public chose to call for this money, and he would pass his accounts and get his *quietus* in that case. If he had refused to account for the money in his hands when so called upon, he would have then incurred a violation of his duty; but this was not the case, he was ready at all times to account: he has done so; he has paid up every shilling of his balance, and passed his accounts. But he is called upon collaterally to answer for a crime in the House of Commons, not called upon in the Exchequer to pass his account as an accountant, he is called upon to answer to a criminal charge of his having made an illegal use of the money. Then, my lords, is not it a fallacy to apply to such a case all the law and all the duties belonging to public accountants rendering their accounts? Is it not a totally different case, when an individual out of office is called upon to answer for misconduct imputed to him whilst he was in office? In what respect does such an one differ from any other individual in the kingdom, who is called upon to answer in any place for any crime imputed to him?

My lords, was such a charge as this ever heard of in a court of British justice? was this new created offence ever heard of in this country, that it is a crime for one under accusation in his voluntary defence not to have told



enough respecting the matters in charge? that as to parts of the accusation he chooses to be silent. Is silence a crime, my lords? That is the nature of the offence here imputed to the noble defendant. What! is it my lords, the place that makes the criminality? Is it because he has presumed to exercise this discretion in his defence in the House of Commons? is it because it was in that 'Sanctuary of Liberty,' peculiarly distinguished by that noble liberty, which is so zealously claimed and so amply enjoyed therein, I mean the freedom of speech, is it in this sanctuary alone that to use that freedom is a crime? What! my lords, is it meant, that when a defendant is brought into the House of Commons to make his voluntary defence, he makes it at such a peril? Is it a snare laid for him? do they mean to catch his words and impeach him for every indiscreet expression? My lords, what is the course observed towards the accused in the humane administration of justice throughout the kingdom? What is the conduct of every private magistrate before whom any individual is brought, charged with crimes of the deepest and highest malignity? does he push interrogatory after interrogatory? Does he seek to extort a confession from him or endeavour to draw him into declarations that may embarrass him in his future defence? No, my lords, directly otherwise is the conduct of every humane magistrate upon the subject. You are at liberty to say what you please, and it is perhaps better for you to say nothing; reserve your defence for the time of trial; but if you choose to say any thing, say what you please, and what you choose voluntarily to say shall be taken down. But did it ever enter into the head of any man since the administration of justice in this country was established: did it ever before happen to a British subject to hear that the silence of the accused, or an avowal not to disclose either the whole or part of what was imputed to him, could be converted into a substantive crime, or an offence at the common law? Was it ever before doubted that the accused had the right, in every place, and before every assembly in this country, to exercise a full and free discretion upon what he shall acknowledge, or what he shall not acknowledge? He has an undoubted right not to speak at all; when he does speak he may at his option utter only part of his defence, or defend himself at large. What can be said for pushing this into a high crime and misdemeanor? The defendant has been guilty of—what?—an indiscretion, a piece of rashness?—impeached for rashness, impeached for indiscretion! It is a high crime and misdemeanor to have made an indiscreet admission, or rather not to have made enough of indiscreet admission; that he did not tell enough against himself, or for himself, is the whole of his crime. My lords, I insist that what or how much he should say in answer to the imputation was perfectly voluntary that he had the same free right of defence before the

House of Commons as any British subject when accused has in any other place, to open his mouth or shut it, to open or half open it, to utter sentences or half sentences; and that what he says, or omits to say, can never be converted into a crime or misdemeanor.

But, my lords, what is this high crime? how does this declaration become criminal? he has refused to disclose the application of this money. Why?—for any considerations that respect himself? to protect, to guard himself against all the peril that awaited him? No, my lords; that which never was a crime by the law of England before becomes so—Why?—because of the assigned motive for this declaration. What is the motive? my lords, it was a motive which one would have supposed would have spoken strongly to the generous feelings of every British breast, a scrupulous regard to an obligation of a high and imperious nature upon an honourable mind, such was the motive, which, as it is expressly stated, is a high crime and a misdemeanor. The noble defendant is charged with having stated himself to be under obligations to be silent from a sense of public duty, private honour, and personal convenience. Does this then convert it into a crime? The defendant was perfectly free to place this sum of 10,000*l.* where he pleased, to use it as he pleased, provided it was not applied to any criminal purpose, or to his own emolument; and because he stated himself not to be at liberty to say more, than positively to negative all the imputed criminality, by a denial of having applied it to any corrupt purpose; (which was all the charge against him, and to which he did explicitly answer); because he would not go further than the matter of charge, being restrained from motives that are obligatory upon every honourable mind; it is for this he is impeached of a high crime and misdemeanor. Surely, my lords, if the silence of one accused as to the matter of accusation upon any subject is not in general criminal, it cannot be made criminal when it is observed under such circumstances and from such motives.

Inferences and suspicions are then attempted to be raised from this declaration. It is said, are we to give lord Melville credit that he applied this 10,000*l.* in the way he has stated? do you believe it? why conceal it if it is an honourable purpose? why do not you speak out? why do not you tell us what the use is? if you do not tell I will insinuate, I will suggest in argument this, that, and the other corrupt purpose; and I will cause it to be believed by your judges that it was used for a criminal purpose; that is, I will supply the defect of proof in a court of criminal justice, and will establish upon my suggestion, and your silence, that you are guilty to the extent imputed to you. Now, undoubtedly the noble defendant did feel that he was in a hard and perilous situation, both with respect to this and another sum of a similar amount that



constitutes one of the posterior articles of charge; he was perfectly aware what obloquy and what suspicions would not fail to be raised against one, situated as he was from the declaration that he made, bound as he conceived himself to be by the sacred obligation of a great minister of state, bound as a public man in high trust at all hazards, and to the extent of any penal consequences that might await him, to carry with him to his grave secret services to which this money had been applied; he was firmly determined not to violate the obligations imposed upon him of public duty and of private honour. If he is to suffer for this, he scruples not to expose himself to all the consequences. Let suspicion be alive, let it follow him wherever imagination can suggest.

I should be glad to ask, what would have been the consequence with respect to those two sums, and with respect to another sum of 40,000*l.* which was taken from the public money under similar circumstances? Suppose lord Melville had been called upon at an earlier period to account for all these sums in the same place; and suppose it had happened unfortunately for the country that the great statesman, who is now no more, had been taken from his country one year prior to the date of his lamented death; and after his death the noble defendant had been called upon to make a disclosure with respect to the whole. My lords, perhaps here with his accusers he will have no credit; but, my lords, with those who know him I trust he will have credit for what would have been his conduct; that the prospect of all the penal consequences in the world to himself, would not have induced him to come forward, and betray his dear departed lamented friend by a disclosure of his having delivered over to him the 40,000*l.* for the public use in an irregular mode. My lords, he would have locked up the secret in his own breast, though he should have been punished to any extent; and he would have had the satisfaction of an honourable mind conscious of having acted right. Under circumstances that appeared to him to preclude the disclosure he would have carried the secret with him to his grave, and sustained in his own person all the suspicions and all the consequences that would have followed that concealment. My lords, lord Melville did so; he pertinaciously refused to answer upon the subject, till it was voluntarily disclosed by the individual who was to be affected by it. Lord Melville never did and never would have disclosed it. Now that by accidental circumstances the purpose to which this sum of 40,000*l.* was applied, has since been disclosed, every one has been perfectly satisfied that upon that, for a time unknown and concealed purpose, the honour and integrity of lord Melville has been fully vindicated. Had this not been disclosed, what would have been the suspicions respecting it? Would it not have been said, "Oh? the 40,000*l.* is gone

to Scotland to buy up some parliamentary interest; it is applied to poison and corrupt the voters in some rotten borough in this country, or to accomplish some wicked purpose of your own. It is fine swaggering language to hold out high sounding motives for secrecy. We know to what corrupt, scandalous purposes, ruinous to the liberties of the country, the 40,000*l.* has been applied." Such, my lords, undoubtedly would have been in the case put, the insinuations against lord Melville; but the accidental investigation which has since taken place of this subject has done this all away, and has, to the full satisfaction of every honourable mind, rendered the conduct of all parties, concerned in the use of this sum, so completely free from every kind of imputation as to be made the subject of parliamentary sanction and approbation.

Still, my lords, it may be said that it does not follow, because accidents have brought forward this disclosure, and enabled the public to be satisfied with respect to this sum of money, that an inference is to be drawn in favour of lord Melville as to the two other sums, the purpose of which is not yet disclosed. Undoubtedly, my lords, such is their predicament, and therefore at present the managers are at liberty to exercise their imaginations, to entertain their suspicions, and to advance all their theories upon the unknown purpose to which these two other sums were applied.

To your lordships liberal minds I appeal whether the circumstances of the case do not fairly lead to different conclusions? whether it is not more likely that a public man placed in a situation of the highest eminence, deeply charged with the country's safety in the most perilous periods, with respect both to its foreign and domestic enemies, ardent and zealous for the public good, and eager to promote it by every means in his power—one who had never betrayed the least regard to money, or the advancement of his private fortune—that such a man, under such circumstances, should have employed the sums, as he has declared he did, in some public and honourable purpose, than in the promotion of his own pecuniary profit and emolument? Recollect, my lords, the period of time when the sums were taken; recollect what was the state of the country, what were the dangers that hung over all our heads; what were the nightly watches; what the affiliated societies by night and by day; what the necessity for great and liberal use to be made of every means and power government possessed to secure the public safety. Perhaps it may be owing,—I hope I may be excused for saying so—to the exertions of the noble defendant at the awful crisis alluded to, that this court has now the power of assembling to try him: his vigorous exertions at that and other periods, it is well known, contributed mainly to preserve the state; must there not at such periods have been many occasions for advances out of the public purse in various modes, that consis-



tently with private honour, consistently with public duty, could not be disclosed? I might be at liberty surely for a defendant, as well as the accusers, to have recourse to suggestions. I might state various honourable—proper—purposes, to which the money might innocently and laudably be applied, which yet (after the application) could not (consistently with a regard to the private honour due to the individuals, who may have been in a situation to make it fitting on the part of the public to reward or to conciliate to the public interest) be disclosed; I say there may have been uses of that nature to which the money may have been not only innocently but meritoriously applied, with an obligation to secrecy still resting upon them.

But, my lords, perhaps it may be said to us, what are *your* conjectures, what are *your* suggestions? They pass for little. I know I speak not with the authority of those who speak against me; but, my lords, in a criminal court the suggestions on one side are as good as the suggestions on the other. Your lordships perhaps will attend to neither, but will attend to proof. Try it then by that test. Now, my lords, the result of the evidence is only this, that lord Melville applied his money to an unknown purpose, that purpose not being proved to be criminal, and being positively proved to have been one from which no benefit accrued to himself. Is that the crime meant to be charged? My lords, it may be said the application to any other than a naval purpose is charged. Is it then meant to be contended that under these terms of the article the charge is meant to be comprehended? My lords, if this be contended to be criminal it must be so, not upon the footing of the warrant, but upon the general principles in respect to the duty of a treasurer, and the effect of the appropriation acts, which would have at all times equally applied to every person holding the office of treasurer; as well before the year 1782, as after. The treasurer, at all periods, was under the same obligation, to keep the money imprested to him, destined for its proper purposes. Do you mean to state then that it was a violation of those acts, and a breach of that duty, to apply the public money, though for a time only, and before it was wanted for the public, to any other than a naval purpose? If so, then every treasurer who at any time laid out the public money to his own use was guilty of this crime. Then all the doctrine laid down in parliament by the high authorities I have stated was erroneous, and it was universally the duty of the treasurer,—and on the same principles, the paymaster of the army,—never to make use of the public money, though for a temporary purpose only. But, my lords, I conceive this proceeds entirely upon a mistaken application of the appropriation acts, which have nothing to do with the case; they are restrictive upon the Exchequer, restrictive upon the minister,

and, to a certain degree, restrictive upon the treasurer, to appropriate finally and definitely money destined for any public service to that public service only. It was not competent for the treasurer at any time to apply money imprested to him to any other purpose that would interfere with the naval purpose; it was not competent for him at any time to transfer it without competent authority definitely and permanently to any other use. And there, with great submission, is the fallacy of the arguments; but to apply the money to a temporary use during the period when it is not wanted for that purpose to which it is ultimately destined, while it is in the custody of the treasurer, and may be locked up in his drawer—he being always ready to supply the public service from other money of his own if wanted,—such an application I submit never was considered, nor can properly be considered as constituting any violation of the appropriation acts, or any offence whatever. Besides which, the application to other than naval services is not made a substantive charge, but is added copulatively to the charge of corruption; the only charge therefore that need be considered in this first article, in respect to this sum of 10,000*l.*, is the applying it to a corrupt and illegal purpose. Now, my lords, I beg to ask, what evidence is there that lord Melville did so apply it? None whatever, not a tittle of evidence upon the subject; the only evidence adduced with respect to it is the testimony of Mr. Trotter, and of the honourable manager, respecting acknowledgments made by the noble defendant.

With respect to the evidence of Mr. Trotter, he has proved nothing, but that lord Melville acknowledged to him, that he had this balance in his hands, for which he was accountable. Did he acknowledge (the question was put to him upon the cross-examination) that he had applied it to any private purpose of his own, any purpose from which he was to derive emolument? Never at all. Did you not understand it to be a public purpose, from whence there was probably loss to him, and no gain upon that subject? his recollection is not very clear, but he thinks it was so;—but he is quite clear that lord Melville never did acknowledge to him, that he applied it to any private purpose; this witness therefore does not prove the corrupt or illegal application. The other witness called to this point, is the honourable manager who conducts this accusation against the noble defendant, and who offered himself as a witness, to prove the acknowledgment made by him, on this subject, in the House of Commons; to prove that of which three or four hundred other persons, who must have heard the same declaration, might have given evidence. There is some awkwardness in this union of character; it has put us under some difficulty, and has rather hampered the situation of the honourable manager. We had from him a little



playfulness of wit, I remember, on the supposed appearance of the defendant, in two characters, in his Treasury accounts. The right honourable Mr. Dundas, borrowing from, and lending to Henry Dundas: *he himself* will have a little difficulty by-and-by to avoid being exposed to a similar remark; when *the honourable manager* is to observe upon the testimony of Mr. Whitbread, and will have to explain all that *he* has said as a witness, there will be considerable difficulty to ascertain whether he is speaking as a manager or as a witness; and if he should add to the testimony he has given, whether we may not have a right to interrupt him with a cross-examination, on the new matter introduced.

There will certainly be a degree of embarrassment attending the honourable manager, when he comes to observe upon his own testimony, *more especially as he stands unconfirmed by any one of the three or four hundred persons who were in the house with him, AND PARTICULARLY AS HE SHOULD SEEM TO STAND IN THE PREDICAMENT OF BEING THE ONLY PERSON THAT SHOULD NOT HAVE BEEN CALLED.* He describes himself to have been at the time listening to the noble defendant, for the purpose of answering him; and his testimony, as your lordships may remember, is the result of the impressions produced upon his mind. Impressions produced upon what mind? Upon the mind of an accuser, upon the mind of a person watching to answer the defence at the time. Now, with great submission, if there were any other witnesses, who could have proved the same thing, and who had not quite the same impressions, it would have been rather more satisfactory to have heard *their* testimony; not that these were not very honourable impressions, resulting from a laudable zeal, of one who on the part of the public, was pursuing to punishment an individual whom he conceived to be highly criminal; impressions naturally operating upon the fairest mind in such a predicament. But when we are to have a witness speak to what another has said at a distant period, especially when what is so said is made the foundation of a criminal charge in an impeachment; I cannot but think it something extraordinary that we should only have one witness, and he standing in the situation that he himself has described on this occasion. We were told by the managers, that some written evidence was to be produced upon the subject; but no such was adduced, and it stands upon the sole testimony of the honourable manager himself. We have the evidence of a most honourable and respectable gentleman, who, I am sure, means to convey all that he recollects upon the subject. Yet he having unfortunately left the notes taken at the time, behind;—having either lost them, or not having referred to them, when he was to be the only witness to support this important charge, which the learned and honourable manager, in his summing up,

pressed so strongly:—we have been prevented, on the cross examination, from obtaining that full explanation and testimony, respecting the whole of what was said by the defendant, that might have been procured from *other* witnesses, had *they* been called.

It does not seem to me, however, that the evidence of the honourable manager has proved the charge; on the contrary, his testimony has expressly negatived all that constitutes the charge, viz.—all corruption, I mean as far as rests on the acknowledgment of the noble defendant. He has proved an admission by the defendant of his having been accountable for the sum of 10,000*l.*; but it is expressly stated by the honourable manager, upon his cross-examination, that the noble defendant at the same time, in the same breath (and his declaration must be taken altogether) positively averred, that he never had derived any private benefit, or emolument whatever from the use of it.

Then, my lords, this charge, supposing it to depend, as I have shown it does, upon criminal corruption, is not only not supported by any testimony adduced on behalf of the prosecution, but is directly, clearly, and positively disproved by the two witnesses who have been called to give testimony respecting it.

My lords, I am sure I need not add, what at the same time would afford abundant satisfaction to your lordships, upon the subject on which I am now speaking, if any confirmatory testimony were wanting in support of this part of the case, how strongly the circumstances tend to remove every ground of suspicion. I think your lordships can have no doubt, that if these sums had in any way been applied to lord Melville's own profit or benefit some traces of such an application must have been discovered by the vigilance of his accusers. If then, after all the industry that has been employed, (and certainly greater industry, and better opportunities for employing it, never were given to any prosecution whatever); if after the exertions made in ransacking every corner of the kingdom, in visiting every banker in England or Scotland, with whom lord Melville ever had a concern in his life; in getting at every letter received from, or written to him during the last 24 years by all his bankers and agents,—the correspondence with whom during all this period, is proved to be in the managers possession, or to have been submitted to their inspection;—if after having examined all the books in all the public offices, all the papers of the living and the dead; if after the extraordinary zeal of personally visiting the attics of a widow, and bringing away all the books and papers of her deceased husband;—rather an arduous and awkward task to be cast upon the honourable manager, who is a little hardly dealt with, in having to sustain a triple duty, and having this character added to that of a manager and a witness;—if the final result



of all this, is, that the accusers have not been able to discover either as to this, or the other sum of 10,000*l.* any, the least ground of suspicion, of their having been one farthing of either carried to the private use of lord Melville; one farthing used to augment his fortune, laid out on private security, or appropriated to the purchase of any stock; though every engine has been set at work by the solicitor of the Bank, who is also solicitor for the prosecution, to ransack all the entries in the books of the Bank for half a century back, wherein, if any stock had been purchased during any part of that period, from any quarter, it must have appeared, for the managers are undoubtedly possessed of the knowledge of all the defendant's concerns; they have stripped him like an insolvent debtor, and examined into every farthing he is worth in the world; every expenditure he has ever made; every item in every account book; they have examined all, and sifted to the bran; and in the result, if the negative appears, of any, the least trace of either of these sums being appropriated to any private use whatever, would not this be sufficient to remove every remnant of suspicion, and satisfactorily to prove that neither of these sums had ever been mixed with lord Melville's private concerns, and that they must have been wholly applied to a public, and not a private purpose? and if so, my lords, there is an end of this charge.

My lords, with respect to the other appendant article, it is stated to be only an amplification of the first; and upon this we are considerably relieved by the declaration made by the honourable and learned manager, who summed up this case; that this additional article (the tenth) was not one that need excite any very considerable degree of alarm on the part of the defendant; he stated that in truth,—this was I think his expression,—it was introduced in fairness and candor to the defendant, to apprise him particularly of the enumeration of sums that were meant to be given in evidence, and which without that enumeration, might have been given in evidence, under the generality of the first charge; but that it arose only from that extreme desire of candor and fairness to the defendant, to apprise him of the particulars of what they meant to charge against him; on this account it was thought better to make these the subject of a specific article, in order that he might be the better prepared for his defence.

My lords, I am considerably relieved by this declaration, for I had before been in an error on the subject; and I hope your lordships will pardon me if I was in that error, because the direct contrary to what the honourable manager has stated, had been stated in, the report from the committee of managers, to the House of Commons; for after stating the importance of this article, they say, being strongly impressed with the importance of the facts, they think it a proper ground of a fur-

ther article; and, my lords, I rather think that the honourable and learned manager is himself under some mistake upon this subject; and though I certainly feel very grateful for every act of candor and fairness on the part of the prosecution towards the defendant, yet he will excuse me, if I cannot feel any very great obligation, upon the subject of the mode in which this candor is shown towards the defendant, by introducing another article in charge against him; to have an additional article to answer, is fairness and candour which I do not want; it is very candid and fair, but I would dispense with such candour and fairness.

Again, I should have thought, that if the object had only been to enumerate the particulars of charge, the prosecutors might have directed to be sent to us a particular account of what they meant to give in charge against us, which would have answered the alleged purpose, without giving your lordships the trouble of receiving an additional article in a mode unprecedented, after the defendant had answered the first set of articles; however, this is only candour and fairness, all done to apprise us of the particulars meant to be given in charge.

Now, my lords, it so happens, that if it is to be considered as nothing but an enumeration of what was contained before, it is a little extraordinary that it does not tally with what is stated in the first article, as to the character and station held by the defendant at the time of taking the money. It so happens too, that this tenth article calls our attention to no particulars at all; it states that he “did on divers days, and times, between the 19th of August, 1782, and the 5th of January 1784, take,” &c. This is to apprise us particularly what day, and time, “I tell you it was on some day or days between 1782 and 1784.” The article further proceeds, “and between the 5th January, 1784, and the 1st of January, 1786.” Now we have got an enlargement of the period, so that in truth the charge is, that on some days and times, between 1782 and 1786, the defendant took divers large sums, amounting to 27,000*l.* or thereabouts;—a lumping charge with respect to dates and sums, is introduced by way of candour, for the purpose of setting forth particulars, that we may be distinctly apprized of what we have to answer. Undoubtedly we might have had a more specific enumeration. We are left at large to discover during a period of four years, when it was, and the taking of what sum or sums it was, that was meant to be proved in charge against us. We are by this article left more in doubt than we were by the former; the former had left it large, but confined to the sum of 10,000*l.*; this extends the sum, and extends the date; nay, my lords, besides this, it has made the subject ten times more confused than it was before, because your lordships will observe that that interval, commencing on the 19th of August, 1782, and



ending January, 1784, comprises a period of eighteen months, one half of which lord Melville was an ex-treasurer. It appears upon the evidence that he went out of office in April, 1783, and did not again come into office till January following. There was a period therefore of nine months within this interval, during which he was an ex-treasurer; and it is stated in this charge which is supposed to be so specific, that he did take and receive from the money issued to him, *either as treasurer, or as ex-treasurer, &c.* Which is it? why, it is one or other, find out which it is; this is for particularity. This candid article informs us that it was money issued to the defendant, either while he was treasurer, or ex-treasurer, and will not tell which; that he did either at one period or at another, during this interval, convert the monies that were issued out to him, either in that predicament or in another. Now it certainly is material for your lordships distinctly to know, whether it was money issued to him whilst he was a treasurer, or an ex-treasurer, because, whatever argument can arise upon the effect of the warrant, applies only to the period whilst he was a treasurer in office. Suppose for the sake of argument, that, within the period stated, namely, posterior to the 10th of April, 1783, when he ceased to be treasurer, and prior to January, 1784, when he came into office again, he had made any private use of the public money for his own benefit, why it is quite clear that he was not then even under the temporary obligation, such as it was, of his warrant; the charge is upon the face of it defective. If an indictment were framed in the same terms, covering a period during one part of which what is charged to have been done was no offence, and during another part it was an offence; the indictment it is clear would be bad upon the face of it, from the equivocal generality, and the want of a sufficient specification, showing whether the act done was done under those circumstances under which any law applied to it, or not.

But, my lords, what is this elaborate history, this arithmetical evidence, after all the researches upon the subject, and all the industry that has been employed upon it? What does it all come to? Take the result of the four solid days employed in the production of old papers and books of account, official and private, which have all been collated, we are told with industry; and the honourable manager if any book had been lost, I dare say could have given evidence of its contents from memory; what is the final result? They have gone back twenty-four years into the defendant's history, and I desire to ask whether there ever was adduced in a court of justice, such evidence for the purpose of establishing the point in issue, in any case, civil or criminal.

My lords, much of the evidence that has been given in support of this charge, appears to me, with great submission to your lord-

ships, to apply to a subject that is not properly comprehended within it. Your lordships will all recollect that you are still at a period in this article, as in the former, when the place of deposit was matter of option. It can never be necessary, therefore, to travel through all that mass of evidence which applies solely to the transit of the money from place to place, to and from any custody (supposing it distinctly proved) private or public, to and from, for instance, the banking house of Mure and Atkinson, a mercantile house (as the honourable manager stated it, and as it is proved) of great credit at that time. As little is it necessary to follow the laborious detail of evidence, to show the transit of the money, when in the hands of the treasurer or ex-treasurer, from one account to another account; that is, a transfer from the account which stood in his name at the Bank under one head, to an account in his name under another head. With great submission, if they had proved ten thousand instances of a similar nature they would not have advanced in support of this charge one iota. The fallacy of all the attempted application of this evidence, is the erroneous supposition that there existed an obligation at that time upon the treasurer, or the ex-treasurer, to keep the money at the Bank, and to keep it in a particular mode at the Bank, viz. under one head of service, without being transferred to another.

My lords, I shall therefore forbear to trouble your lordships with any examination of the whole evidence, which employed so many hours and days of your lordships valuable time, in travelling through the history of a treasurer's and an ex-treasurer's money, which at times was out of the Bank, and deposited with Mure and Atkinson, and then came back from them, or from any other private quarter, into the Bank. My answer, in general, is that the whole of the money imprested either to a treasurer, or ex-treasurer, might have been lawfully deposited with Mure and Atkinson, or with any other private individuals of note, or not of note, throughout the whole metropolis, with or without account, in any mode which the discretion, the prudence, the responsibility of the treasurer dictated. The transfer from one account to another account, which was spoken of by one of the witnesses, and which he truly said, cannot be done by a treasurer, or an ex-treasurer, without the authority of the board, is a transfer of another, and a perfectly distinct nature. It applies wholly to the account kept by a treasurer, or an ex-treasurer, not with the Bank, but with the public. He cannot, for instance, permanently in that account, transfer any part of the balance with which he is chargeable under one head of service to another head; he cannot hand any part of it over to the treasurer in office, or to any other ex-treasurer; or if he fills both characters himself, he cannot transfer it from his account with the public in one cha-



acter, to his account in another, so as to discharge himself of all responsibility in one character, and make himself responsible for it in another; that he cannot do without authority.

I must confess, my lords, I am struck with astonishment, considering the accuracy of the knowledge possessed by the honourable managers, that they should have so singularly confounded two subjects, which are of so perfectly distinct a nature; and should have represented the account, which the treasurer or ex-treasurer kept at the Bank at that time, as a public account. He kept his cash at the Bank, if he thought fit, just as any private individual might, under whatever head he pleased; and he might at any time at his option transfer it in his own account with himself, from one character or head of service to another, but he did not thereby in the least affect or alter the separate and distinct responsibility and charge, in which he stood with the public under either head or character. He might just as well have been impeached for taking his money from one drawer and putting it into another, or from one bureau into another, or from an iron chest into a wooden chest; all this was done from time to time, just as suited the convenience, I will not say of himself,—your lordships will not suppose he was managing the detail of this business,—but of his paymaster, to whom it was wholly left; and it was perfectly legal and competent for him to act in these respects as convenience directed.

My lords, I will not trouble your lordships with particularizing the sums; if I have made myself intelligible upon this part of the case, my argument will be found to dispose of the whole of the evidence which applies to 27,000*l.*, except two distinct sums of 1,000*l.* each of Bank notes, which are endeavoured to be traced from the Exchequer to the bankers of the defendant; as to all the remainder, the evidence is nothing but an history of the travels of the money to and from different places under different circumstances, and, whether it was prudent or imprudent to deposit it at one place or at another; it is quite enough to state that there is not a tittle of evidence before your lordships to prove, and the fact unquestionably is otherwise, that any profit or any emolument of any kind whatever was ever derived to lord Melville from the transfer from place to place; and it is corruption, emolument, profit, that alone constitutes the imputed guilt, not the transfer from one place to another. You have proved only the change of place of deposit—you have proved no profit or emolument derived from it whatever, and in the absence of all proof your lordships cannot supply it. The whole imputation of corruption therefore in these two articles, my lords, and all the business relating to it during this ancient period, commencing with the year 1782, and ending with 1786, is at length reduced to these two sums of 1,000*l.* each.

Now, my lords, I will suppose for a moment that I am not able to give your lordships any answer, or any explanation upon the subject of these two sums—I desire to ask, if I may presume so to do,—Is there any one of your lordships, who would convict lord Melville, of this foul crime of corruption, upon the ground of the evidence as it stands respecting these two items, and pronounce that he had been a corrupt man, making use of the public money, knowingly, intentionally, to his own private use and emolument? why? because he is not able to explain or account for these two sums, after a lapse of four and twenty years, occupied too as that interval has been by one never from the hour of his birth attentive to his accounts, never preserving his documents or vouchers (as it is in proof before your lordships he never did, at any period, not that he withheld or destroyed them for a criminal purpose at a particular time, as I shall hereafter show, in answer to insinuations and suspicions, which have been most unfortunately, I had almost said most unfairly pressed against him) never in the habit of attending correctly to these subjects, never having any relish or taste for them; whose whole heart and mind was in the public service, occupying his vigorous and energetic mind,—at periods also when a man of less vigour and public spirit, could not but have been roused and called from his desk, when if he had been ever of a disposition low, mean, and base enough, to pry into these petty concerns, the danger of the state and the great interests committed to his care, could not but have preferably engaged his whole time and attention;—would any one of your lordships doom the noble defendant to ignominy for ever, because he is not able under such circumstances to trace a sum of 2,000*l.*, paid into the hands of his banker, after a lapse of twenty-four years, and after the death of the person who managed the business for him?

My lords, what is the sort of evidence adduced upon this subject?—documentary evidence, extracts from entries in old books of accounts—how correct your lordships accidentally discovered in some striking instances of gross errors—how far to be depended upon in a criminal case when the witnesses are interrogated with respect to any entry in their books—“have you any recollection upon the subject? can you now give us an explanatory account of any one of these items, so that we may be enabled to know what the transaction was, how there happened to be a mixture of public and private money, how it happened that Mr. Douglas, when money was issued out of the Exchequer, carried it to the two private bankers of lord Melville, with his own hands, or those of any messenger sent by him? Can any one of you give us any account of this business?”—no, they uniformly answer, we have not the least recollection upon the subject; the remote period of time prevents the possibility of our having any memory or recollec-



tion respecting it. We know only that the entry is in our hand-writing; and that entry is received as evidence of the fact.

Now, my lords, what is the result and what do the managers desire of your lordships? Why, that in your lordships minds every presumption should be made against the defendant, unless he can explain what all the witnesses say, it is impossible for any man now living to explain, when the only man who could give any explanation, viz. Mr. Douglas, is dead; who is proved on the part of the prosecution, to have been the sole manager of all these pecuniary matters; who was the agent, and by the course of office necessarily had the management committed to him, of all the details; to whom, as the paymaster, all the different sums from the Exchequer *de facto* were issued. In the absence of this testimony, what is the course taken by the prosecutor? Why, he proceeds to supply the defects in the proof by conjecture against the defendant; and without one single witness proving any one act done by the noble defendant, showing his mind to have gone along with the subject, your lordships are to presume that he knew of, and was watching his account at the Bank; that he was apprised of having overdrawn his account, and that he therefore derived knowingly a quantum of benefit by the payment of the two sums in question, into Drummonds and Moffatts' banks, which if they had not been paid, he would have had a few pounds of interest to pay, to the extent in which his banker's account was overdrawn. Your lordships are to presume the noble defendant was watching all this, and was intentionally using the public money in aid of his own private funds, for the purpose of saving himself a pitiful sum of interest for a small interval, during which his account would have been otherwise overdrawn, though it is proved that prior to that period of time, no interest had ever been charged him by that banker, and though it appears that the first suggestion coming from that banker to lord Melville, of his account being overdrawn, was in the month of June 1785, long after the payment of this money into that bank.—Your lordships will observe too, what alone is sufficient to satisfy every fair mind, that no such use as is charged, was made by lord Melville of the public money; a piece of evidence that came out by mere accident from a book which was given in evidence by the managers; the notice from Messieurs Drummonds' house, to lord Melville of his account being overdrawn, was in June, 1785, to the amount of 2,900*l.* 13*s.* 10*d.*: there appear in the very same book two entries, immediately following the entry read by the prosecutors, and which I am sure from inadvertence only were overlooked, and not read by them: the book, your lordships may remember, had been carried away, but these entries being discovered, it was at our instance brought back, and the entries read. From one of them it appears, that in October

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of the same year (1785) 2,000*l.* was paid by lord Melville, to Messieurs Drummonds, by remittances from Scotland, and in December of the same year, 3,600*l.* to ditto by ditto, that is, by remittances from Scotland, making together 5,600*l.* Now, I desire to ask your lordships, whether this is the conduct of a man who was in the habit of resorting to the public money, practising upon his banking account, and relieving himself by payments from the public funds. It appears, that upon the first notice he receives of his private account being overdrawn, he takes measures for supplying it within as short a period as the time and circumstances would reasonably admit, viz. in the short interval between June and October; and how does he do this? Does he put his hand into the public purse and help himself out of the balances remaining there? It is in evidence before your lordships, that there were at that time balances kept at the Bank by lord Melville, uncalled for by the public, to the amount of 56,000*l.*; and that in 1791, there was 21,000*l.* left, so that from 1785 to 1791, there had been more than the latter sum lying at the Bank unwanted for the public service, exclusive and independent of the 10,000*l.* of which I have before spoken.

Now, my lords, I desire to ask, if this were a question, in a civil suit, and a recent case, would not this afford a most decisive proof of innocence? If the defendant had been in the habit of relinquishing duty for the sake of pecuniary interest, and of pursuing one object at the expense of the other, is it to be believed that he would not have acted throughout upon the same lucrative principle? Would he have been picking up shillings? Would he have sold his dearest honour and fame for comparatively nothing; his high rank, his elevated station, his estimation with the world, the darling object of his life; would he have given up all for the sake of a miserable saving of a few shillings of interest on a banker's account? But if that had been his object, why, in God's name, does he pay 56,000*l.* into the Bank, when he goes out of office? He was under no obligation to part with this balance, or deposit it in any particular place; it was matter of perfect option to pay one farthing into the Bank. Why did he not keep it all in his own custody, doling it out as occasion called for it, and in the interim making use of it for his private benefit?

Can it then be doubted, my lords, that the voluntary payment of the large sum of 56,000*l.* into the Bank, there to lie dead till wanted for the public, negatives all idea of a corrupt intention in the noble defendant, to make use of the public money for himself, or to aid his own private account, by the application of that which did not belong to him?

But, my lords, again, after he had paid this 56,000*l.* into the Bank, and it stood there at his disposal, and after he was called upon, at the peril of being liable to interest, by this



dunning letter, unless he made good the balance there was against him, at Messieurs Drummonds'; why does not this put it into his head, to make it instantly good by a transfer of the amount of the balance, or more, from the money at the Bank, which he was as free to keep at Drummonds' as at the Bank? Now, is it not the most clear and decisive proof, that that was not his practice, when we find him, the instant he is apprised of the state of his account at Drummonds', going to Scotland, and remitting to Drummonds' from thence, out of his own private money, to the amount of 5,600*l.*, which he must have done at a loss to himself; for it is not to be supposed, in whatever way the money was raised, but that it must have been taken from a fund that either brought him interest, or for which he would have to pay it.

My lords, I will not follow the subject through every minute observation. With respect to the identity of the two Bank notes, which has been made out with so much ostentation and parade of industry, as if we were trying a forgery upon the Bank; it proves nothing to the present purpose; for, supposing that Mr. Douglas, who appears to have, at that time, received lord Melville's salary, and other monies due to his lordship as his private agent, and to have been paying sums from time to time into lord Melville's account, at Messieurs Drummonds', supposing that he having received at the Exchequer a Bank note of 1,000*l.*, pays that identical note into Messieurs Drummonds' bank, on lord Melville's account, what then? If he had received an equal sum, or was to receive an equal sum in amount from lord Melville's own private funds, what criminality was there in that? Why might he not have paid sums into the Bank, for the private use of lord Melville, in the management of his concerns, unknown to lord Melville? or if lord Melville did know of the payment, and of the fund from which it came, yet if Mr. Douglas had in his hands, money of lord Melville's to an equal amount, what objection was there to such a payment? The identity of the notes only proves that such was the mode adopted by Mr. Douglas, in the arrangement of these concerns; but in the absence of all explanatory testimony from Mr. Douglas, how can any satisfactory judgment be formed on this subject? It appears undoubtedly, that Mr. Douglas did mix one account with another, it being proved that at a posterior date, 1,000*l.* of lord Melville's salary was received and paid by Mr. Douglas, into the public account; I submit therefore that the bare circumstance of identity, proves nothing upon the point we are now arguing, viz. that there was a criminal intent, on the part of the noble defendant, to make profit and to lay out to his own use and benefit any portion of public money.— And here I beg leave to observe, that I hope your lordships will all along advert to this, in the course of this inquiry, that the question is

not precisely what the terms used by the hon. and learned manager, who concluded, might lead your lordships to suppose, viz. that if it be proved (I think the expression was) that lord Melville had made advantage of the public money to the amount of one shilling, the managers have substantiated the charge; I hope your lordships will not consider such to be the question between us, because if many shillings and many pounds of advantage were, without the knowledge of lord Melville, without his privity, without his direction, without his authority and consent, inadvertently or by the management of others, appropriated to his benefit, yet the charge would not be established; it is the *wilful* application of the public money to his own benefit that constitutes the guilt; and it is that, and that only, that must be unequivocally fastened upon the noble defendant, before your lordships can pronounce him guilty of this charge.

My lords, I beg leave also to object to the general principles of evidence applicable to this subject, which were stated by the honourable and learned manager. I do not mean at present to advert to the extraordinary doctrine, which I own was a little new to me in a criminal case, the doctrine of presumption. I dare say it is owing to my ignorance, and want of experience; but I own the principles I heard stated, with respect to the rules of evidence, governing a criminal case, were a little novel to me. That honourable and learned manager referred your lordships upon the subject of presumptions, to a case determined by my lord Eldon, and reported in Vesey's Reports; with respect to which, with great deference to him, it does not seem to me to afford much assistance in this particular case; the question in that case was entirely confined to what was the proper rule to be adopted in a court of equity, in adjusting the accounts between a principal and his agent; two persons standing in that relation one to the other; and I observe in that case the noble and learned lord, in the only doctrine that is of general application, lays down a principle that may be useful on the present occasion. He observes, "that as a general proposition, nothing can be stated more mischievous than that this Court should readily act, at the end of nineteen or twenty years, when no regular accounts have been kept, upon such conjectural, argumentative, and irregular grounds, and documents to supply the place of regular accounts, as in this case are made the foundation of this charge; and the Court must hold a very strict hand over cases of exception.\*"—So, my lords, I say, in the present case, it would be most mischievous to act upon conjecture in the place of proof, at the distance not of nineteen or twenty years, but at the distance of twenty-four years, after all living testimony is gone,

\* 8 Ves. Jur. 369.



and after all opportunity of examining the subject is lost; nay, farther, my lords, after it has been proved to your lordships, that by the general course and rule of the service, all the details of these pecuniary matters, naturally and properly devolve upon, and are conducted by the paymaster, and not by the treasurer—after there has been a total failure of proof of any one act of corruption on the part of lord Melville, and when their negative of that imputation is fairly deducible, as far as can be discovered, by the same written documents which are adduced against him; under such circumstances I submit that it would be the wildest presumption in the world, if, upon such sort of testimony, it were possible for your lordships to pronounce that fatal judgment against the noble defendant, declaring that your lordships are satisfied he was a corrupt man, that his mind went along with these acts, and that these sums of 2,000*l.* were knowingly and wilfully applied to his own temporary profit for the sake of obtaining the mean, dirty, paltry benefit, to be derived from a saving of the trifling charge of interest, which might have accrued from an over-drawing of his banker's account.

My lords, to the charge contained in both these articles, of the continuance of a balance in his hands after the act of parliament, I do not know that it is necessary for me to advert at all; because I did not observe that the honourable and learned manager, or even (I think) the honourable manager who opened the business,—certainly not the honourable and learned manager who concluded it,—ventured to rely at all upon that, as constituting any crime whatever. In truth, it is clear it does not; because your lordships have only to look at the act of parliament to see, that it relates altogether, from one end of it to the other, to money issued posterior to the date of it; to money that is issued from the 1st of July, I think, 1785; and that it has not the smallest reference to, that it could not contain any direction whatever concerning, that it could not regulate in any respect whatever, any money that had been antecedently issued to the treasurer's own account under the former system.—In truth, my lords, a perfectly fresh account is directed to be opened, a new place of deposit is made by that act, and a new course of proceeding is adopted by it; but with respect to all antecedent sums they remain untouched; and both with respect to lord Melville, and any one of his predecessors, if any one stood in the same situation, as I believe some did, not having passed their account, no obligation was cast upon any one of them to bring their balances to the Bank; but their option of keeping the public money wherever they thought fit, rested entirely upon the same footing as it did before; as to all balances, therefore, existing prior to July, 1785, the case is precisely the same after the act of parliament as it was before:

I have now, my lords, closed what I pro-

posed to offer to your lordships by way of answer and defence to those two articles. If exhausts all the first period during the time of Mr. Douglas's paymastership, and comprehends every item of charge contained in the first and tenth articles.

The next subject for your lordships' consideration relates to the second period, posterior to the act of parliament 25 Geo. 3rd. It begins with the second article, and your lordships will observe, by the frame of that second article the use of the money is not mentioned: It seems framed for the purpose of drawing from your lordships an adjudication upon an abstract principle of law, upon the construction of the act of the 25th of the king, which lord Melville is stated to have violated very soon after it had passed.

To augment the responsibility for the due observance of this act, the preamble to the articles introduces a history of this act, in a way not very usual in a criminal charge; and I believe it is a little novel to such of your lordships as are used to legal proceedings, to see stated in a criminal charge for the breach of an act of parliament, *who* brought the bill into the House of Commons, and *who* carried it up to the House of Lords, for the purpose of raising the charge of *personal* criminality in the violation of it. It is the first time I ever heard this topic so urged. In the second article it is charged, that lord Melville “did, after the passing of the said act (25 Geo. 3rd.) and whilst the said Henry lord viscount Melville continued to hold and enjoy the said office, connive at and permit and suffer the said Alexander Trotter, under and by virtue of the said authority so given to him by the said Henry lord viscount Melville as aforesaid, illegally to draw, receive, and take from the governor and company of the Bank of England, for other purposes than for” (your lordships will have the goodness to watch the expression here slipped in, *not contained in* the act of parliament, though contended to be warranted by *the construction of* the act) “*immediate* application to navy services, large sums of money, from and out of the monies *before then* issued unto the said governor and company of the Bank of England, on account of the said Henry lord viscount Melville, as treasurer of his majesty's navy: and the said Henry lord viscount Melville did connive at, and permit and suffer the said Alexander Trotter to place the said last-mentioned sums of money, or a great part thereof, so illegally drawn, received, and taken by him from the governor and company of the Bank of England as aforesaid, in the hands of Messieurs Thomas Coutts and company the private bankers of the said Alexander Trotter, in his own name, and subject to his sole control and disposition.”

Your lordships will observe that, by the terms of this article, the charge is altogether confined to the bare transfer of money from one place to another, without stating it as done for any private purpose; but only predi-



cating of the act done, that it was a permission to draw from the Bank to Coutts's for other than *immediate* naval purposes. It does not aver that it was not a transfer for naval purposes, but only that those naval purposes were not *immediate*; that is to say, it was a removal of the public money from one place to the other, the latter to be a place of deposit intermediate before it reached its destined object, a naval purpose. That is, to take the money from the Bank of England, and place it at Coutts's bank, although remaining there honestly and *bona fide* for naval purposes, or to put it in the iron chest for naval purposes, but those naval purposes not immediate, but of a nature contingent, whence it was uncertain whether they would be immediate or not, such as is the case your lordships know with respect to all assigned bills, all demands where bills are drawn upon the treasurer, and which are called for at uncertain periods, although immediately due to a very large amount, and the treasurer has notice given him, intimating that he is to be prepared to answer those bills whenever called upon by the payee, for they are payable at sight. I say, to have had the money in any place of deposit, though *bona fide* and faithfully reserved for these purposes, and though no part of it be used for any private purpose whatever, yet this is stated by this article to be contrary to the duty of a treasurer, contrary to the statute, and to constitute a high crime and misdemeanor.

Now, with great deference to your lordships, this proposition I deny—I deny the consequence—I deny the law—I say this charge proceeds on a misunderstanding of the law. The discussion of this legal question I am afraid will unavoidably produce the necessity of entering into the consideration of the clauses of the act, and the import and meaning of every part of it. I must therefore entreat your lordships' indulgent attention to a subject of so dry a nature; and I feel particularly anxious to be honoured with that attention, because, upon this subject, my lord Melville has been subjected to a great deal of popular clamour; lord Melville, it has been said, takes great merit for being the author of the act one day, and he immediately breaks it the next. He, the reformer of former abuses—he who was expected to be possessed of the spirit as well as the letter of the act—he, who being the author of the act, and the treasurer in office, had encouraged the public to entertain a hope of great benefit to be derived from his carrying his own reforms into execution—how lamentably was the country disappointed to find this framer of his own act the instant violator of it!

Now, let us see and consider the act; and here, my lords, with great submission, unless I have most egregiously mistaken this act in every word, and in every part of it,—and I have taken some pains not to do so,—I do humbly submit that there never was a clearer question agitated in a court of justice, as to

the true construction of it; and that what lord Melville did—respecting which I shall observe hereafter—was not a breach either of the letter or of the spirit of the act—was not in the least contravening one single particle of it—nay, further, that if this law were what it is contended to be on the part of the prosecution,—what your lordships are desired to assert it to be upon your honour,—upon the footing of which your lordships are to convict lord Melville of a high crime and misdemeanor,—that if that were the law, parliament ought not to lose one hour in repealing it, as being one of the most mischievous statutes that ever passed, operating most injuriously against a meritorious class of men, for whose benefit it was supposed to provide, and tending to arrest the pay and service of the Navy, to overturn the whole conduct of the treasurer's office; that it ought to be repealed in a day, from the danger of the terrible consequences that might follow if it were not. Nay, my lords, further, that this act, if such be the construction of it, is violated every day and every hour—that it has been violated by every one of lord Melville's successors—violated after it was declared that such was the construction of it—that it continues to be violated down to this very hour—nay, violated after an unsuccessful attempt made on the part of the present treasurer, to carry into execution the construction of it, which is attempted upon the part of the prosecution to be established. The present treasurer, it has been proved, has declared it impossible to put such a construction in practice; and that the public service could not have gone on if he had not relinquished it. If lord Melville had been the author of this bill, and the construction were that which is contended for; knowing his duty and the nature of the service, he must have been indeed a most flagitious treasurer, to have introduced regulations which he must have known to be ruinous to the service, and incompatible with the discharge of every part of the duty of the office with which he was entrusted.

Now, my lords, I shall beg leave to make use of a topic in aid of my argument, since the prosecutors have chosen to introduce it, which I conceive will be considerably in favour of it, viz. that my lord Melville, the quondam treasurer, and the then treasurer, was the author of the bill: I will take in aid with me likewise, what the learned and honourable manager pleased to introduce, the knowledge which lord Melville had acquired with respect to this office which he had so long conducted. The doctrine contended for on the part of the prosecution is this, that after the public money has issued from the Exchequer, the act allows only one place of deposit for it; that in the language of the preamble to the articles, the Bank is to be the sole place of deposit; that it was the object of the commissioners of accounts in 1780, to make the Bank the sole place of deposit, and the construction put upon the act on the part of the prosecution



has been, that this object was adopted and made a peremptory rule of law by that statute. It has been expressly in terms stated, that the legislature intended that the public money, the instant of its issuing from the Bank, should go into the pocket of the public creditor.

Now, my lords, I beg, in the outset of the argument, to exclude one attempt that may be made to raise distinctions between one private custody and another private custody. It can never be contended, that the words of the act tend to authorize any such distinction; still less can it be contended, I presume, that it was the intention of the act to authorize cash to be deposited with a subordinate in the office, and to forbid its being trusted with the principal. Your lordships will hardly suppose that the legislature, in a public act, regulating the treasurer's office for all times to come, would be less jealous of the inferiors than of the superior in office. It is in evidence, that the subordinates give no security. They are appointed by the treasurer, and he is responsible for them. They have small salaries, and are in the nature of the treasurer's clerks. Neither will it be supposed, that lord Melville, who introduced the act, had suspicions of himself but entire confidence in the integrity of his subordinates, and that he meant to lay restrictions upon himself and his paymaster and not to lay them also upon his sub-accountants.

I state this for the purpose of establishing this primary proposition, that the prosecutor is driven to the alternative of saying, that either the act allows no other place of deposit, save and except the Bank, and the pocket of the creditor authorized under the act to receive the money; or that, if there is to be any other place of custody, the act not having specified what that place was to be, it must be determined by reference to the antecedent course of office.

Now, my lords, let us see what was the course of office antecedent to the passing of the act; because, undoubtedly, if the course of office is not changed expressly by the act; if the act, in the terms of it, can be made consistent with the course of office; and if, in order to carry on the public service, it appears to be necessary that such course of office should be pursued, and accordingly such course has ever since been observed; and if no provision is made in the act for substituting new modes of proceeding, in the place of the old course of office; then I apprehend the true construction of the act must be procured from the terms of the act, coupled with the course of office that existed before, and that continued unbroken ever after.

Now, what was that course of office? The course of office is proved in evidence, to have been antecedent to passing the act precisely the same as it continued afterwards, and it was this: the treasurer by his paymaster was accustomed to draw upon the naval fund, wherever that fund was, which was kept usu-

ally at the Bank, for the purpose of possessing himself of money, which he afterwards distributed to the different sub-accountants, who were to make payment to the several creditors, calling for it from day to day; for instance, he drew upon the public, and possessed himself of 1,000*l.*, of which he distributed 500*l.* to one sub-accountant, 200*l.* to another, and so on till the whole was exhausted, for the purpose of carrying on the current service of the day; the treasurer, or his paymaster, exercising his discretion, with what sums he would thus supply his subordinates, as the means of carrying on the public service.

In the next place, it is proved that the actual daily demands made upon this fund were very numerous, and for very small sums. In the month of January, 1785, I think a short time before passing the act, there were no less than eighteen hundred very small payments by the treasurer, many, I think, below eight shillings and ninepence, and ten shillings, and most of them below one pound; and it is in evidence that a great many such payments are called for daily; and called for by whom? by sailors who have omitted to put in their claim at the out-ports when the ships were paid off, and who present their claims to the office in London to be paid the small fragments that remained due to them for wages; or by their widows and their families, under the humane and salutary regulations, established by that admirable system of laws, framed by the defendant for the benefit of every part of the service. Various small sums are under that system distributed to sailors' wives in their absence; to their widows and families after their death, from day to day, at the public office at Somerset house.

Now, my lords, it is supposed to have been the intention of this act, that the Bank was to be the sole place of deposit; and that all the claimants I have mentioned, calling for their money from day to day, are to be sent to the Bank with drafts for payment, that is to say, that a sailor, his wife, his widow, or his child, having a demand to the amount of eight or nine shillings, is not to receive it without being put to the trouble of being sent to the Bank, and going through all the checks and forms prescribed by the course of office, which would be equally required to be observed in the payment of a small sum, such as eight shillings, as of eight thousand pounds. Now I beg to ask, whether, if a sailor were put into that predicament, if he were told when he came for his wages to Somerset-house, "We have no money here, it is all at the Bank; you must go to the Bank for your money; take this draft, and go and get paid there;" would not many a sailor be disposed to answer, "I won't go there; I don't know where the Bank is; and if I am not to have my pay without all this trouble, take your paper back, and tear it to pieces; I will not thank you for it:" or if he took the draft, I should



be glad to ask how this mode of payment would facilitate the service, or operate to guard that meritorious class of men, against the frauds and impositions that would be practised upon them, by those who would always be in waiting, to facilitate the forms of office to them, and who would for a small or large premium give them cash for their draft, and take all the trouble off their hands, of going through all the details of office at the Bank?

But, my lords, still more, if this had been the course prescribed, not only would it have raised all these obstacles in the daily payment of this class of men, but it would have gone further; for the consequence would have been that all payments below the sum of twenty shillings, could never have been made at all.

My lords, I will explain what I mean: I beg to refer your lordships to a public act of parliament still in force, which renders the construction of the act of 25th Geo. 3rd, contended for on the part of the prosecution, quite impossible; the statute I mean is, the 15th Geo. 3rd, cap. 51. Your lordships will find that by that act, all drafts under twenty shillings, are absolutely illegal and prohibited. Then, my lords, what is to become of the sailors? what is to become of their wives and families who have these demands of small sums below twenty shillings? they cannot be paid in cash at Somerset house, because the Bank is to be the sole place of deposit, and they cannot be paid by a draft, because the act prohibits the issue of any draft under twenty shillings. I should be glad to ask what becomes of this new curious system, supposed to be prescribed by the act, and that too by one well acquainted with the course of office? Nay, my lords, even to the amount of five pounds, there would be considerable difficulties; for by the statute 17th Geo. 3rd, cap. 30, great restrictions are imposed upon any drafts under five pounds, such as it would be extremely difficult, if not impracticable to render compatible with the course of office pursued in this department.

These two acts therefore, applied to the act in question, necessarily exclude the construction contended for, and show, that it could not possibly have been the intent of the legislature, to put a negative upon the ancient course of office; to prohibit cash being lodged at Somerset house; or to make the Bank the sole place of deposit.

But I desire to ask, is this the necessary construction of the words of the act? Is there any thing in the act, that by any fair interpretation, in any respect interferes with the former duty of the treasurer and paymaster, carried on prior to the act in the way that I have stated? Not only is there no word in the act to take from the treasurer the power he before exercised of drawing for money to carry on the public service; but the words contained in it, are not to be construed with-

out a continuance of that power. Nay, if the power had not existed before, it would have been expressly given by the very terms of the act, which are supposed to deprive him of it. Here, my lords, I beg your lordships will permit me, with great deference, to state one clue, that appears to me to solve much of the fallacy that has prevailed, in reasoning upon the construction of the act. It has arisen from not attending to the distinction between the original and primary place of deposit, and the place of the sole ultimate and continuing deposit; and, if your lordships will have the goodness to advert to what was the history and occasion of the act, and what the real nature of the provisions contained in it, for the supposed violation of which the unfortunate defendant has been so much blamed; your lordships will find it to have been an important, salutary, and beneficial act, and that it has been by the noble defendant, at all times from the passing of it, rigidly, correctly, honesty, and punctually observed, and carried into execution both in its letter and spirit.

What were the mischiefs intended to be guarded against by the act? one great evil which had preceded that act was, that the treasurer's business did not cease with his office: that the business was carried on by the ex-treasurer, with all the mischiefs attending such a proceeding; that the public business belonging to the treasurer of the Navy, was transferred into the hands of persons who were under no obligation of office whatever, the discharge of whose duties was perfectly voluntary. In one instance it is stated by the commissioners of accounts, that an ex-treasurer positively refused to carry on the payments at all, and a great detriment arose to the service; a stoppage of all payments for I believe eight months: it had besides the effect of enabling ex-treasurers to have large balances in their hands for a long period of time; for they carried their balances with them when they went out of office, and they neither did nor could pay into the Exchequer those balances, until the final settlement of their accounts. These accounts were for a long time retarded in the passing them, and therefore it was that salutary acts were introduced for substituting commissioners, instead of the old auditors of accounts, with new powers and provisions for accelerating the passing of the accounts, and getting back into the public coffer, out of private custody, money that was no longer wanted for any public use.

Another great object of the act was, to prevent the issuing of the public money from the public Exchequer, one hour before it was wanted; because it was felt to be a solid and an important object for the public, that the public money should be brought into the Exchequer from the pocket of the subject as soon as possible; and that it should not be taken out of it, before it was wanted for the public service. These great objects therefore



were to be obtained by making, as this act did, an alteration in the whole course of the business, by providing that no longer should any part of the treasurer's business be carried on by him, after he went out of office; but that upon going out he should transfer all his balances, all his duties, and all his functions to his successor. It rendered the account no longer personal, but official; whatever existing balance there was, within one month after the treasurer went out of office, is directed to be handed over to his successor, who becomes immediately accountable for the whole expenditure.

Another object undoubtedly was, to prevent money being drawn from the Treasury or the Bank, even by the treasurer in office, beyond what was necessary for the naval service. For it certainly was an object, to lessen and keep down balances in the hands of the existing treasurer, just as it was an object to prevent any balance whatever, from being in the hands of an ex-treasurer. To lessen the balance of the one, and to take away altogether the balances from the other, these were the two great objects of the act; with that view, it is directed that the money should issue primarily, not as heretofore to the treasurer, but that it shall instantly go to the Bank. To guard also against the issuing of more than the service requires, important salutary checks are imposed in calling for money from the Exchequer. The act provides, that the treasurer shall never be permitted to ascertain the quantum of the sum, but *that* shall be done by the several boards who know the amount the several services require; and in drawing upon the Treasury for money from time to time, the treasurer is directed by the act, to accompany his memorial with the letter from the board, specifying the sum wanted, and accompanying it also with an account of his existing balance at the time, in order that the board may, in the first instance, be apprized of the necessity there is for any further issue, and that the Treasury may exercise their judgment as to the propriety of a further issue.

In furtherance of the same object, the act directs, that whenever the treasurer has got a supply of money, he is immediately to communicate the result to the several boards, to give them an account from month to month, and from time to time of the actual amount in the Bank to the treasurer's credit, or in his hands, in order that they may be apprized how the balance stands at the then period, and regulate their calls upon the Treasury from time to time accordingly. Now, all this is for the purpose of regulating the primary original issue from the Exchequer to the Bank; and I distinctly admit that in that respect the Bank is the primary place of the receipt of the money from the Exchequer; that it must go in the first instance altogether, and be lodged at the Bank. But how is the service to be carried on afterwards? What is next

to be done? Is it, as before, that the treasurer and his paymaster are to draw upon the Bank for the money, possessing themselves of a fund to carry on a head of service? or are they prohibited from doing so, and ordered to send every body to the Bank for payment, or if they draw at all, are they to draw only in the name of the payee? not one word upon the subject; that which, if it had been intended, would have required the most direct, positive, and explicit negative to overturn, and to innovate upon the whole course of service carried on before. There is not one word about it; but all that there is in the act upon the subject is perfectly consonant with, nay cannot fairly be interpreted without a reference to, and continuation of the ancient course of service.

We are now, my lords, inquiring whether there is any prohibition, any negative upon the antecedent right of the treasurer to draw upon the Bank, for the purpose of carrying on the public service. Now the words of the act are these: the 4th section provides "that the treasurer of his majesty's navy, for the time being, by himself, or the person or persons in his office duly authorized by the said treasurer (plainly alluding to the existing course of office, by which it was usual for the treasurer to authorize the paymaster, or some other person, to carry on the detail of the service); "that the treasurer for the time being, or the person in his office duly authorized by him, from and after the 1st of July, 1785, shall draw upon the governor and company of the Bank of England for all navy service whatever, and shall specify in each and every draft the *head of Service* for which the same is drawn: and no draft of the treasurer, &c. shall be a sufficient voucher unless it specifies *the head of Service*."

Now, can words be used more clearly, aptly, and distinctly, continuing the course of service by means of the draft of the treasurer? are they to be drafts in favour of an individual? no; what is the import of the word? is it not an aggregate term? for "*a head of Service*?" what is meant by that? the treasurer is to draw for a head of service—Is not that in order to possess himself of a fund to carry on that head of service? does it not point out most distinctly and clearly, to any body who will read the words, the intended continuance of the discretionary power of the treasurer to draw out a sufficient fund to carry on the service? It is not to be a draft drawn in favor of any of his subordinates, or of any particular persons: but without any specification of payee, without any further limitation upon him, than that he is to specify the aggregate head of service, for which he wants the fund, it leaves him to carry on that head of service, precisely as it was carried on before. Your lordships will more strongly perceive this meaning of the act, when you compare it with a modern act, upon a similar subject; wherein it may be seen by the contrast in what mode



the legislature has imposed restrictions such as are contended for. The act deprives the treasurer of the right of drawing in the aggregate for the whole head of service, and prescribes a form of draft, and a fixed obligation of drawing in favour of a particular individual, as the occasion arises; I mean the late act for regulating the office of the treasurer of the ordnance. Your lordships will there see that this act is a copy of the act of 25th Geo. 3rd; but in addition thereto it has introduced several new clauses for the purpose, supplying the regulations on this very subject. The treasurer is precluded from drawing in the aggregate for all the money imprested, and directed to draw in detail in favour of each individual, in the form of notes, the form of the notes to be ascertained by the Treasury. It is further provided, that he shall never possess himself of a fund to carry on his petty payments, till authorized so to do by the ordinance. My lords, I submit that the comparison of the one act with the other, and the particularity of the new provisions introduced by way of addition into the latter act, decisively show the opinion of the legislature as to the necessity of such new provisions, and fortifies the construction which we contend the act of the 25th Geo. 3rd, without any such provisions, ought to receive.

But, my lords, the ninth section of the act 25th Geo. 3rd seems to me decisive upon the subject. It is there provided, that from and after "the 1st day of July, the treasurer of his majesty's navy, for the time being, shall keep the account with the Bank, of all monies issued to, or directed to be paid to him for the service of the navy." He is to keep an account of all monies paid to him; and yet according to the prosecutor's construction of the act, no monies ever could be paid to him—then how is he to keep an account of what he never could receive?

Besides this, even the eleventh section, which out of great caution was introduced to enable the treasurer to supply the out-ports, and which was relied upon as evincing the opposite construction of the act, when correctly examined, affords an inference directly to the contrary; for it is there provided, that "nothing in this act shall be construed to extend to prevent the treasurer of his majesty's navy from issuing to the pay-clerks, at the several out-ports, such sums as may be thought necessary by the navy board, for paying ships, and carrying on recalls." But how is the treasurer to issue any sums, unless he has them? How is he to create the sums? According to the manager's construction, he never can have any sum in his possession, he never can possess himself of any fund, and yet he is there authorized to supply the out-ports, out of the sums he has in his hands.

I would submit to your lordships that throughout the whole of this act, through which I am too tediously travelling, in every clause, when attentively considered, the regu-

lations prescribed will fairly appear to be perfectly compatible with the old course of office, and to leave it in fact precisely as it existed before, with this restriction only, that the money is undoubtedly to be drawn for, only for naval services. It is to be drawn, in the same manner as before the act, by the treasurer, or his paymaster, and when possessed by him, it is to be distributed through the medium of the sub-accountants, to carry on the current service of the navy, precisely as it was before.

I hope none of your lordships will misunderstand me, or suppose that I am now anticipating that part of the argument which relates to the use that is charged to have been made of the power given. That is matter of subsequent consideration. What power was given by lord Melville, and what use was made of it by Mr. Trotter, are perfectly distinct and separate questions; I am at present only considering the construction of the act in the abstract and upon the face of the act itself, compared with the known current service of the navy, for the purpose of showing that the proposition contained in the second article of the impeachment, is directly contrary to the construction of the act, and would tend to disturb, to innovate, and to break in upon the whole course of the service as established by that act.

With respect to the argument used on the other side, that the service may be carried on, by the paymaster's drawing for the money in favour of a sub-accountant, without retaining any part of it himself; that is also a different question, and does not interfere with what I have stated. If the argument is a sound one, that the act has made the Bank the sole place of deposit, the violation of the law would be the same, if the money was drawn from the Bank, and in the interim, before its distribution in naval services, was placed in the iron chest, though unused, and to be doled out from thence for the current service, or placed directly in the sub-accountant's hands waiting its ultimate destination. This would equally militate with the absolute exclusion contended for, of every place of deposit, except the Bank, previous to the money being paid to the public creditors. For these reasons, I contend that the second article must be negatived, as containing a proposition contrary to the fair construction and import of the law, upon which it is founded.

I would only beg your lordships' permission, to advert to one observation more, respecting this act, that I may not be supposed to have overlooked or purposely omitted it. It relates to the third section of the act, which is supposed to contain a negative upon any money, being, at any time, placed in the treasurer's hands, because it is there stated "that no money for the service of the navy shall be issued from the Exchequer, or shall be placed, or directed to be placed in his possession." This is still perfectly consistent



with my argument. The first part of this section is "that no money for the service of the navy, shall be issued from his majesty's Exchequer to the treasurer of the navy." The next is, "or shall be placed, or directed to be placed in his hands or possession." Both these relate to the issue of money to the primary place of deposit, the Bank. Your lordships know the money used to issue from the Exchequer to the treasurer; there were also other sources from which money used to be carried, and put into the hands of the treasurer. The act meaning to negative both, directs that both the money which issued from the Treasury, and also that which issued from any other source, shall in the first instance be all carried to and constitute a head of account at the Bank. Then follows the clause, that all shall be carried to different heads of service, in the treasurer's account at the Bank; and then succeed the directions, how the treasurer is from thence to draw the money from time to time as occasion may require, for the benefit of the public service. I beg pardon for having omitted to notice this clause before. The answer is obvious, but I would not pass it by, lest it might be thought that I had designedly omitted *that*, which might seem at first view to contravene the argument, with which I have troubled your lordships.

My lords, I have now disposed of the charges contained in three of the articles of impeachment; the seven that remain, are reducible to one general head; they relate to a new period, and I am afraid will unavoidably branch out, from the detailed manner in which they have been treated, into some length.

*Lord Chancellor.*—*Mr. Plumer.* If you seek for a resting place in a course so complicated and extensive as this, you may freely choose it for yourself. This Court, which ought to be an example to all other courts, will ever hold in the highest reverence, the indulgent character of British justice. I am persuaded, without calling for the formal consent of their lordships, that if you find it more consistent with the duty which you owe to your client, or more comfortable to yourself, you may rest here, and proceed tomorrow morning in your defence.

*Mr. Plumer.*—I cannot express the gratitude I feel for your lordships' great indulgence. The subject upon which I am entering, is undoubtedly of considerable length and detail, it is one entire subject, which I am afraid it would be quite impossible for me with any exertion, to conclude within any limits I could hope to be allowed in the course of this day—I am entirely at your lordships' disposal.

Adjourned to the chamber of parliament.

TWELFTH DAY.

Wednesday, May 14th, 1806.

The Lords and others came from the Chamber.  
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ber of Parliament into Westminster-hall, in the same order as on the first day of the trial.

*Lord Chancellor.*—Gentlemen, who are of counsel for lord Melville, you may now proceed with the defence, and the lords will be pleased to give their attention.

*Mr. Plumer.*—My lords, under favour of your lordships' great indulgence, for which I trust your lordships will believe me to be impressed with every sense of the deepest gratitude, I proceed now to examine the remaining articles of impeachment.

My lords, I begin first with the third article of impeachment, which presents, in addition to the circumstance of withdrawing the money from the Bank, and placing it at Messieurs Coutts's, the circumstance of the corrupt use of it; and your lordships will have the goodness to advert to the terms in which that is charged in the article. The introductory part of it states the fact of the removal from the Bank to Coutts's, and then proceeds to state that lord Melville "did, after the 10th of January, 1786, fraudulently and illegally permit and suffer Alexander Trotter to place many of the said sums of money so drawn, received, and taken by him from the Governor and Company of the Bank of England as aforesaid, in the hands of Messieurs Thomas Coutts and Company, the private bankers of the said Alexander Trotter, in his own name, and at his own disposal." It then charges, that "Alexander Trotter did thereupon, with the privity, by the connivance, and with the permission of the said Henry lord viscount Melville, apply and use the said last-mentioned sums of money, or great part thereof, for purposes of private advantage or interest, profit, and emolument, and did place the said sums of money, or a great part thereof, in the hands of the said Messieurs Coutts and Company, mixed with and undistinguished from the proper monies of the said Alexander Trotter, whereby the said last-mentioned sums of money were not only applied to and used for purposes of private advantage, or interest, profit, and emolument, and for purposes other than navy services; but were also exposed to great risk of loss, and were withdrawn from the control and disposition of the treasurer of his majesty's navy;" and then it states, that "by these acts" (enumerating them) "lord Melville has acted in breach of the great trust and confidence reposed in him, in violation of the said act of parliament, made for regulating his said office, contrary to his duty, and against the laws of this realm, and to the evil example of all persons entrusted in the great departments of the public service, with any control over the application and expenditure of the public money."

Your lordships will have the goodness to observe first, negatively, what the charge is not. It is not a charge against lord Melville for negligence. It is not a charge, that by his omitting to keep a vigilant and superintendant eye over the conduct of his pay-



master, the paymaster was enabled to be guilty of the abuses which have been proved. That is not the charge; but the charge is, that he wilfully, knowingly, illegally, and fraudulently, with full knowledge, connived at, and permitted, and authorized all that was done; that is the question, in this article, and in all that follow it. Your lordships will see, that the impeachment is not, in any part of it, founded upon any thing that lord Melville, in the regular course of his duty, omitted to do; or upon any charge, that, by reason of any omission, abuses crept into the office placed under his general superintendence; but it is a charge of a much higher nature. It is not what he *omitted* to do, but what he *did*. The misconduct imputed is of an active nature, that he did know of the use made of the public money, and for corrupt purposes confederated and participated with Mr. Trotter for purposes of private emolument. In substance, the charge is a corrupt confederacy between lord Melville and Mr. Trotter to enrich themselves by a breach of official duty.

My lords, the next article (the fourth) charges, that "whilst lord Melville held and enjoyed the said office of treasurer of his majesty's navy, the said Alexander Trotter did, with the privity, or by the connivance and permission of the said Henry lord viscount Melville, place sums of money, issued from his majesty's Exchequer unto the Governor and Company of the Bank of England, on account of the treasurer of his majesty's navy, and drawn, received, and taken by him the said Alexander Trotter from the Governor and Company of the Bank of England, in the hands of Mark Sprot and other persons." Here again lord Melville is charged expressly with privity and knowledge of the placing of the money in the hands of one individual by name, and other persons. Your lordships observe it is not stated that these acts were done by Mr. Trotter for want of due vigilance and care in lord Melville, but expressly that they were done with his lordship's privity and knowledge.

The fifth article relates to a distinct subject—a sum of money charged to have been taken by lord Melville, to the amount of 10,000*l.*, and that he fraudulently and illegally converted and applied the same to his own use, or to some other corrupt and illegal purpose.

Your lordships will observe, that here it is expressly charged—and it constitutes the main part of the crime—the corrupt and illegal purpose to which the money was applied;—not that it is some unknown purpose—nor that it is some purpose not yet disclosed, but the prosecutor takes upon himself to state, that he does know it, and he undertakes to prove it to have been a corrupt and illegal purpose. He is bound to prove that, and in the absence of proof it cannot be supplied.

The sixth article, after a little repetition of what had been before stated respecting the

money drawn from one place to the other, proceeds to state, that "during the time the said Alexander Trotter held and enjoyed the said office of paymaster to the said Henry lord viscount Melville as aforesaid, and whilst the said Henry lord viscount Melville, held and enjoyed the said office of treasurer of his majesty's navy as aforesaid, he the said Alexander Trotter kept with the said Henry lord viscount Melville an account current, entered in certain books of account, containing entries of all the sums paid and received by the said Alexander Trotter, on the account of the said Henry lord viscount Melville, and by agreement between the said Henry lord viscount Melville and the said Alexander Trotter, bearing date the 18th and 23rd days of February, 1803."—Your lordships will have the goodness to observe the order in which these facts are stated; it begins with, first, stating books of account to be kept, and items entered in them, containing the receipts and payments between lord Melville and Mr. Trotter; and then, dropping for a time the business of the books, it takes up another transaction, the release and agreement made between these two parties upon the 18th and 23rd of February, 1783, wherein "it is stated that they had either mutually delivered up to each other, or resolved and agreed mutually to cancel or destroy all the vouchers or other memorandums and writings, that at any time theretofore might have existed, passed, or been interchanged between them relative to the said accounts, and the different items and articles of which the said accounts were composed or consisted." This intermediate passage, your lordships will observe, interposed between the first statement of the books of account, respects the release which has been given in evidence, and speaks of its contents. Then again it resumes the subject of the books:—"and the said books of account, containing the said account current, together with all vouchers or other memorandums and writings in the possession of the said Alexander Trotter, and also of the said Henry lord viscount Melville, relative thereto, were burnt and destroyed by the said Henry lord viscount Melville and Alexander Trotter." The books of account were burnt by lord Melville and Mr. Trotter. That is the averment, which the prosecutor has undertaken to prove.—"And the said stipulation contained in the said agreement, for the said Henry lord viscount Melville and Alexander Trotter mutually delivering up to each other, or for mutually cancelling and destroying all the said vouchers, or other memorandums or writings relative to the said account, was so entered into; and the said books of account, vouchers, and memorandums and writings were so burnt and destroyed, with a view to conceal and prevent the discovery of the several advances of money made by the said Alexander Trotter to the said Henry lord viscount Melville, and of the several accounts or considerations for or upon which the same were so advanced."



I have taken the liberty to draw your lordships' attention particularly to the framing of this article; because, undoubtedly, without correct attention to it, the subject of the books of account is so intermixed with the subject of the release, and the vouchers and papers to which alone the release related (it having stated nothing at all respecting the books of account); it might have led an unwary reader to believe, that the release had a close relation to the books of account; that it was preparatory to their destruction, that it stipulated for their destruction, and that the destruction of them was the confederate act of lord Melville and Mr. Trotter, for the purpose of concealing their corrupt transactions. That is expressly the charge in this article.

The seventh article relates to advances of money made on lord Melville's account. It states, that he "did procure, obtain, and receive from the said Alexander Trotter a sum of 22,000*l.*, or some other large sum or sums of money, advanced by the said Alexander Trotter to the said Henry lord viscount Melville without interest; part whereof was so advanced exclusively from public money, so as aforesaid illegally drawn from the Governor and Company of the Bank of England by the said Alexander Trotter; and other part whereof was advanced from the said mixed fund, composed as well of public money so as aforesaid illegally drawn by the said Alexander Trotter from the Governor and Company of the Bank of England, and placed by him in the hands of the said Messieurs Coutts and Company as aforesaid, as of the proper monies of the said Alexander Trotter in the hands of the said Messieurs Coutts and Company, which had been mixed therewith, and remained undistinguished therefrom."

Then, without stating that this money was, with the knowledge of lord Melville, advanced out of that mixed fund, but stating simply the fact that it was so advanced, it goes on to charge, "that for the purpose of more effectually concealing the said advances of money, the said books of account, vouchers, memorandums, and writings, were so as aforesaid burnt and destroyed."

The next article, the eighth, charges, "That amongst other advances of money, so as aforesaid obtained and received by the said Henry lord viscount Melville from the said Alexander Trotter, the said Henry lord viscount Melville did obtain and receive a sum of 22,000*l.*, or some other large sum or sums of money, advanced to him by the said Alexander Trotter." And here follows a very singular and novel allegation in a criminal charge: "and for which it has been alleged by lord Melville that he was to pay interest, and for the purpose of concealing these advances the books were destroyed."

Your lordships observe, that this charge in the article states no more than merely the advances of money by Mr. Trotter to lord Melville, not stating out of what funds, as the

preceding article and the one that follows have done, but *simpliciter* advances by Mr. Trotter to lord Melville, and the allegation of lord Melville that he was to pay interest for them, without averring that allegation of lord Melville to be true or false, but leaving it upon the allegation of his lordship. In the preceding article it is stated expressly, that the other advances were without interest; but as to these the article does not state the fact either way, whether they were with interest or without interest, but merely the allegation of lord Melville upon the subject.

The ninth and last article states, that "during all, or great part of the time, the said Alexander Trotter held and enjoyed the said office of paymaster of Henry lord viscount Melville as aforesaid, and the said Henry lord viscount Melville held and enjoyed the said office of treasurer of his majesty's navy as aforesaid, he the said Alexander Trotter did gratuitously, and without salary or other pecuniary compensation, act in and transact the private business of the said Henry lord viscount Melville as his agent, and was from time to time in advance for the said Henry lord viscount Melville in that respect, to the amount of from ten thousand to twenty thousand pounds, or to some other great amount; and which advances were taken from the said sums of money so placed by the said Alexander Trotter in the hands of the said Messieurs Coutts and Company, consisting in part of public money, drawn by him from the Governor and Company of the Bank of England as aforesaid, and in part of his own private monies mixed therewith and undistinguished therefrom."

It further states, that "the said Alexander Trotter, did so gratuitously, and without salary, act, and transact the private business of the said Henry lord viscount Melville, and make him such advances of money as aforesaid, in consideration of Henry lord viscount Melville conniving at and permitting and suffering the said Alexander Trotter so as aforesaid to apply and make use of the said sums of public money so drawn by him from the Bank of England, and applied and appropriated for purposes of private advantage or interest, profit, and emolument as aforesaid; and the said Alexander Trotter would not have been, and was well known to the said Henry lord viscount Melville not to have been able to make such advances of money to the said Henry lord viscount Melville as aforesaid, otherwise than from and by means of the said sums of public money so drawn by the said Alexander Trotter from the Bank of England, with the privity, connivance, and permission of the said Henry lord viscount Melville as aforesaid, and applied by the said Alexander Trotter for purposes of private advantage, interest, profit, and emolument."

Then it concludes, generally, with stating these acts to be high crimes and misdemeanors.



Your lordships will be pleased to observe, that this last article contains a summary of the motives and considerations that operated upon the mind of lord Melville, as inducements with him to give permission and authority to Mr. Trotter to make use of the public money; and they consist, your lordships observe, of two considerations, one being the consideration of Mr. Trotter acting as his private agent without salary; that is one of the alleged motives: the second motive assigned is the advances of money made from time to time as before described, referring to those gradual advances, from ten to twenty thousand pounds, that were occasionally made to lord Melville out of the mixed fund.

My lords, I have stated these articles together, because they appear to me to be very much upon the same subject, and to present to your lordships altogether, as the honourable and learned manager who summed up the evidence stated, a combined and collected charge, consisting of a charge of corrupt confederacy between lord Melville and Mr. Trotter, thus to abuse their trust and make use of the public money, originating in an illegal and fraudulent permission to remove the public money from the Bank of England to a private bank, and then proceeding mutually to make use of it for their common benefit and advantage, with full knowledge on the part of lord Melville of all the uses made of it for corrupt purposes, and destroying all the vestiges of proof by which these corrupt transactions could have been discovered. I hope, my lords, I state the charge fairly; and, my lords, undoubtedly this is a charge, as was truly stated, of the greatest magnitude, and one that most affects the honour of the defendant. Part of the transactions, that are the subject of charge also, are not of equal antiquity, but are of more modern occurrence than those that were the subject of the former articles; and therefore are more capable of being investigated, and of having greater light thrown upon them. They are transactions, respecting which there is a living witness, who was the great actor in them, and who has been called on the part of the prosecution. Undoubtedly this is the main and principal foundation of the impeachment, and which your lordships would expect to be clearly and satisfactorily investigated and proved on the part of the prosecution, before your lordships pronounce a judgment against the defendant, by which crimes of such turpitude and enormity are to be fixed upon him.

Now, my lords, I have egregiously deceived myself,—and that, too, after a most attentive and careful comparison of the charge with the evidence;—if, even with the feeble powers I possess, should I have the honour of receiving your lordships' attention, I am not able to prove (I hope I am not too arrogant in presuming to say to your lordships' satisfaction), not only that the whole of the charge is in every part unsupported by the evidence—

not only that there is not any balance of testimony upon the subject, but that the evidence adduced by the prosecutor has totally failed him; that the charges are directly, positively, clearly, and satisfactorily disproved *in toto* by the very evidence adduced in support of them.

My lords, the subject of this charge introduces your lordships to the history of that person who was the principal actor and witness in the whole business, Mr. Trotter; concerning whom your lordships have heard from the honourable managers an account who he was—how introduced to my lord Melville—the situation he occupied—and the part he took. Much observation has been made upon the conduct of lord Melville, and much inference drawn from his having committed the care of all this business too much to Mr. Trotter: that he delegated a considerable part of the duties of this office without due examination to Mr. Trotter; that the permission he was desired to give originally, to remove money from the Bank, was enough to awaken suspicion; nay, that the first permission given for that removal was a corrupt act, done for the very purpose of the use that was afterwards made of it; it was preliminary, introductory to it, and was the commencement in the year 1786 of that systematic plan of corrupt confederacy, which pervaded the fourteen following years prior to lord Melville's quitting this office in 1800.

The honourable and learned manager, who selected what the managers conceived to be the evidence constituting the proof of the charge, stated the instances of sums of money laid out for the benefit of lord Melville to consist principally of four distinct items, all, as it was stated, with public money, viz. the 13,500*l.* India stock, purchased in the years 1789, 1790, 1793, 13,500*l.* or 14,500*l.*; the loyalty loan, amounting to 11,000*l.*, and a fraction in the year 1797; the sum of 2,000*l.* India stock, and the sum of 7,000*l.* 3 per cent reduced, bought also in the year 1797. There are other remittances mentioned, but these I think constitute the principal articles, which were selected as forming the ground upon which this heavy charge of corruption rests against lord Melville. All this was done corruptly with his full privity and knowledge, at least in breach of the terms of the warrant, though not of any act of parliament; nay, in drawing from the Bank for purposes of corruption, in clear violation of the act, introduced by himself; that lord Melville corruptly and knowingly, at different periods of time, laid out the public money in the public funds, for the purpose of augmenting his private fortune; and that to a very considerable amount he suffered Mr. Trotter to do the same.

Now, my lords, the account which the honourable manager, who opened the charge, has given of Mr. Trotter, upon whose testimony every thing in these articles depends,



is this;—that early in the year 1786, after the death of Mr. Douglas, which happened in the latter end of the year 1785, Mr. Trotter was introduced into the employ of lord Melville to whom he had before recommended himself by the important assistance which he had afforded in this office. He had been a clerk in the Navy-pay-office, and was very conversant with all the details of the business of it; a gentleman of creditable and opulent connections, proved to be the son and the brother of opulent bankers; having another brother engaged in large mercantile concerns, and of considerable opulence;—a gentleman stated by the honourable manager to have been (with the exception of the transactions which are in charge, and which were for the first time discovered in the year 1803), prior to that time, and in all the other parts of his life, of unsullied character. The honourable manager has borne this testimony respecting him, and the honourable manager has certainly had better means of knowing all his history, and more intimate communication and acquaintance with him perhaps than any body else; for in the course of his duty he has been led to make every possible inquiry concerning him and his affairs; has had frequent interviews with him, during a long course of time past, for the purpose of interrogating him, and discovering every thing that related both to him and the charge. He has informed your lordships that in all other parts of his conduct, either his public or private life, he stood free from all imputation whatever: a man of high estimation, of reputed probity and integrity; a man conversant with figures, with the detail of all the business of the office; and as your lordships have seen from his demeanor and deportment before this high court, a man not wanting in understanding, of a ready and comprehensive mind, and of accurate information upon all the business committed to him.

The honourable manager added likewise that he was a gentleman of unspotted private character, of very amiable manners, recommended by every thing at that time that could give confidence and credit to him. The additional circumstances of recommendation, particularly to one in lord Melville's situation, were his accuracy and knowledge in that species of business, to which it was quite impossible for his lordship (and to which his own natural habits certainly never led him) to give any attention, and his merit as an officer in this department, and the useful and important regulations which he had been the means of enabling the noble lord to reduce into that extensive system and code of laws, for the benefit of the navy, which has been so fairly and candidly spoken of by the honourable manager who opened the charges.

It therefore cannot be said to have been extraordinary to find under these circumstances and at this time—nothing having then occurred to prevent it—the transfer from lord

Melville of all his confidence to such a gentleman. I think no candid mind can hesitate in the opinion that, whatever may have passed since (and which I am sure your lordships will not permit to be antedated and ingrafted upon the then view of the case), in all that was then known of this gentleman's life and character, there was any thing to induce lord Melville to withhold from him, what he certainly received, his full, entire, and unqualified confidence.

My lords, the honourable manager further stated with respect to Mr. Trotter, even after all that has passed and is known of him, that he is a person to whom your lordships may give full credit as to every thing he said. The honourable manager having, previous to that declaration, had certain opportunities of knowing all that he was to say, having been for a period of a great many months, in a course of minutely examining him, during which Mr. Trotter had at one period incurred the displeasure of those before whom he was privately examined, and for a time suffered corrective punishment, until he had satisfactorily expiated that offence, and at their instance was released and declared to have given satisfactory intelligence and answers to all their inquiries.\*

He has been examined with all his books and papers; access has been had to his banker's account, and all the items that compose it; every paper that could produce impressions or conjectures adverse to the defendant has been shown him to refresh or bias his memory, to which your lordships must have observed him repeatedly referring in the course of his examination. Frequently declaring, I had no recollection upon the subject, but a paper was shown me yesterday, or some time ago, from whence I am induced to believe so and so. Referring to that sort of examination, which undoubtedly the course of this proceeding authorises, the private examination of the witnesses by the committee of the managers, from day to day, from week to week, and from month to month, with all the great power they possess of the compulsory production of all books, papers, and writings from every quarter that can throw any light upon the subject,—a power which certainly has been very fully used upon the present occasion. Upon the result of all this investigation, thus pursued for more than twelve months, the honourable manager tells your lordships that you may give credit to every thing that Mr. Trotter says.

That I may not misrepresent the honourable manager, or be supposed to speak from loose recollection, I will beg to state to your lordships the note I myself took of this part of his opening speech. I do not mean to offer myself as a witness, my lords, upon the subject, but only to endeavour to be accurate as to the expressions used upon this subject. I under-

\* *Vide* 6 Hans. Parl. Deb. 353, 359.



stood the honourable manager to say, that in earlier life Mr. Trotter had shown the greatest possible propriety, and ever since, except in the instances that were the subject of charge; that he had been employed as paymaster not only by lord Melville, but by the two treasurers who succeeded him—two persons of undoubted honour and probity, one of whom, Mr. Bragge Bathurst, has been examined before your lordships, the other a member of your lordships' house, who succeeded lord Melville.

The honourable manager gave credit to the noble defendant for having in an honourable, generous, and manly way said of Mr. Trotter that he was a meritorious man, and one who had deserved to be trusted; he adds "a man more beloved by his relations I know not, and he has the strongest testimonies in his favour."

The honourable manager was also pleased to state, that "it was very fortunate that what Mr. Trotter would say would be confirmed by books; that in every statement his veracity was established; that it was most fortunate for the prosecution and for Mr. Trotter himself, that he was living and able to give his testimony;" he also stated that "there was no human being could give the account of these transactions but Mr. Trotter, and the noble defendant himself;" that on "that account a bill of indemnity had passed that he might be rendered a witness able to speak the truth \*."

Your lordships will all remember that the testimony of Mr. Trotter, considered as the main pillar of the prosecution, was deemed so important as to be the subject of one act, and to give rise to another for the purpose of removing every possible obstacle in the way of having this important witness brought forward to substantiate the charge; that as the accomplice he was to be received into indemnity and favour, provided he would give testimony against the principal, against the person who was concerned with him in this joint and mutual guilt.

My lords, the other passage to which I alluded was, "you may believe Mr. Trotter in this, as you may in every part of his testimony." This was the account with which this gentleman was introduced by the prosecutors themselves.

Now, my lords, who is this Mr. Trotter, and what is the situation in which he is brought forward as a witness? I entreat your lordships to consider whether there ever was a witness brought before a court of justice who had stronger motives to give testimony hostile to a defendant, for the purpose of exonerating himself, and transferring at least an equal share of guilt to the defendant; whether there ever was a witness brought forward under circumstances, if he could be capable of attend-

ing to them, of stronger bias upon his mind, and creating a greater interest in his taking part with the accusers? To give testimony favourable to his fallen patron, I mean false testimony, undoubtedly there cannot be supposed any possible inducement;—but by speaking the truth, by discovering their joint guilt, what is the situation to which he would recommend himself?

He recommends himself to his own conscience, and avoids the guilt of perjury; besides which he recommends himself to a great, a mighty, and a powerful prosecutor. He has the best assurance of protection and indemnity under that act, which has made it an express condition of his indemnity, that he should speak the truth distinctly, fairly, and explicitly; and which therefore if he omitted to do, he would violate all title to that protection and indemnity; in addition to which he would subject himself, and justly subject himself, to that civil prosecution in the Exchequer, which is suspended over his head, and by which he and his family would be involved in ruin, and the produce of the labour of his whole life taken from him.

I hope, my lords, I do not overstate it in saying, that a witness standing in this predicament, has undoubtedly no inducement that can operate upon his mind to give any testimony favourable to the defendant, but certainly every motive that could induce him, if the truth would permit, to give testimony against him.

In addition to this, consider my lords, not only has Mr. Trotter every motive of interest to transfer upon the defendant, or to participate with him the guilt imputed; but by taking it all upon himself, and completely exonerating lord Melville, what a deep accumulation of guilt does he fix upon himself! what perfidy! what abuse of trust and confidence!—what an accumulation of misery brought upon his patron and protector does he thus authenticate by his own evidence, and lodge upon his own guilty head.

My lords, would he not naturally be tempted to say, "I am not the man that I have been thought to be; I did not act in this instance without authority; I had the full explicit authority of the noble defendant for all that I did; I was not treacherously betraying him; I was not secretly, and without his knowledge, acting upon this subject? but he has to answer for all that was done. He participated in it; I, the subordinate, obeyed his orders in what I did, and he is at least equally responsible with myself." Undoubtedly, my lords, that representation of the subject would have taken off the additional reproach upon Mr. Trotter, for having acted in the manner he did, without the knowledge, without the participation, without the connivance, without the encouragement, without the authority, of his principal. My lords, I hope I state the case fairly as it really stands in respect to the situation and credit of this witness, and the

\* See Mr. Whitbread's opening speech, p. 641, 642, 643.



circumstances under which his testimony is adduced by the prosecutor.

Now, my lords, if, after all that has passed, when this person is compelled to speak out, and to do away all the mystery, all the doubt, all the suspicions that once hung upon these transactions;—if coming forward, under all the circumstances which have been stated before this great tribunal, and in the face of the public, Mr. Trotter distinctly avows upon his oath, that the acts which are in charge were all his own unauthorized acts, committed without the knowledge of the defendant, without any thing to lead him to the discovery of them, for his own exclusive gain, for the entire unparticipated profit of himself alone, of which he never rendered any account, not of one farthing from the beginning to the end,—if he confesses all the employment of the public money to have been carried on behind the back of the defendant, without one single circumstance ever communicated that might draw the attention of the noble defendant to it, engaged as he knew him to be in public concerns, and inattentive, as he also knew him to be, to matters of this description;—can any honourable mind hesitate to believe that this is a true statement of the case? My lords, I would submit, before I examine any part of the detail of the business, whether this, if it be the result, does not afford a strong, an invincible ground of defence, that supersedes the necessity of minute and particular inquiry, that must bring conviction home to the mind of every man of the falsehood and injustice of the accusation.

But, my lords, if there should, or could be any doubt entertained in private upon the subject, yet if this be the state of the case proved by the witness adduced by the prosecution, your lordships cannot, I submit, declare it to have been otherwise, still less if that witness stands uncontradicted; if the whole of the prosecution as to these charges, rests upon his testimony; and if all the rest of the evidence is only confirmatory of that testimony; as it was stated to be by the honourable manager; least of all will your lordships be disposed to make that declaration, when the evidence before you is not only all on one side, and in favour of the defendant, but where it appears to be all the evidence that the nature of the subject admits of, as was also stated by the honourable manager, who certainly knows perfectly and accurately what evidence can be adduced. He has stated that these transactions were known only to two persons, viz. Lord Melville, and Mr. Trotter. Lord Melville's account has been given in evidence, in which he has in the most positive terms,—offering to authenticate his asseveration in a still more solemn manner,—declared the negative of his knowledge of, the negative *in toto* of his participation in the use of the public money at any one period of time by Mr. Trotter, for any purpose of emolument or benefit whatever. This is the declaration of one of

the persons stated by the honourable manager to be cognizant of the subject. There is only one other person, he has truly said, acquainted with it; and that other person is Mr. Trotter; no other human being in the world can state what the fact was; and that other person under the circumstances I have stated, confirms the account of lord Melville, exonerates him completely, takes the whole upon himself, and declares,

Me me, adsum qui feci, nihil ille nec ausus  
Nec potuit.

My lords, under these circumstances, I trust your lordships will be satisfied that you cannot fairly and justly fix upon the noble defendant the foul reproach contained in these charges, which I am sure your lordships will feel ought to be supported by the clearest and most positive testimony, before they can receive any sanction in your lordships' judgment.

I shall not, however, rest here, I do not mean to avoid the detail. With your lordships' permission, I will examine every one of the transactions relied upon on the part of the prosecution—and I hope to be able to satisfy your lordships, that upon the prosecutor's own evidence, the instances selected for the purpose of proving corrupt confederacy in the defendant, and a participation of guilt with Mr. Trotter, when they are correctly examined fairly afford an inference directly the reverse. But, my lords, before entering into this detail, I must entreat your lordships' attention to a few leading and general considerations. The history of these transactions commences with the year 1786; and I beg your lordships will permit me to possess you with what appears upon the evidence to have been the situation of lord Melville at that time. In the year 1784, he had been appointed president of the board of control, in which office he continued, as is proved before your lordships, for a period of seventeen years, down to the year 1801; for the first nine years performing the duties without salary, in consideration, I presume, of his having united with it this office of treasurer of the navy. It is also proved that it was the period of the first establishment of that board,—a period in which the affairs of the East India company recently under the consideration of parliament, had been proved to be in a very dilapidated state; and to call for all the vigour and energy that could be directed to the restoration of prosperity to our eastern empire. It is in proof before your lordships, that lord Melville was a vigilant, active, and laborious servant of the public in that department, bestowing his daily and unremitted assiduity and care to the duties of that office, under circumstances of considerable difficulty. He was not only called upon to conduct the affairs of that great department, but to make new establishments both at home and abroad; he had to form new systems, as well as to carry them into execution; he had to provide for the prosperity and comfort of



all the inhabitants of the East, by the new and important regulations which were happily framed and carried into execution under his management.

In the year 1791, a very memorable period in the annals of Europe, and particularly in this country,—a period your lordships all remember, when certain principles threatened the destruction of the constitution, and when a revolution in a neighbouring country had created so much alarm in this;—in that period lord Melville, from a knowledge of the vigour and energy with which he had conducted himself in every department entrusted to him, was appointed by his majesty, secretary of state in the home department, an office that particularly required vigilance day and night, to watch over what was going forward at that interesting and important period; all the highest concerns of the country were thus necessarily brought under his superintending management, from the year 1791, to the year 1794; and when new difficulties threatened, when besides all the alarm that prevailed at home, Great Britain was threatened with external war by an inveterate enemy, and soon afterwards involved in it; your lordships find that lord Melville was then appointed by his majesty, secretary of state for the war department; continuing in that situation from the year 1794, till the year 1801. He was during this period, I may be permitted to say, as the fact is known to many of your lordships, much against his own inclinations, called upon by his majesty, to fill those high departments of the state, in moments of the greatest peril at home and abroad. He continued to possess a plurality of important duty, such as rarely had been placed in the hands of any other public man; not only filling this situation of treasurer of the Navy, the whole detail of which had always been left to a subordinate, but he had at the same moment united himself to the care of our eastern empire, as president of the board of control, during the whole period from 1784 to 1801; and during the same period, he was occupied as I have shown, first as secretary of state for the home department, and afterwards as secretary of state for the war department.

My lords, as I am upon this subject, I hope your lordships will forgive me for adverting to a circumstance relative to one of these offices mentioned by the honourable manager, who opened the charges, for the purpose, as I understood the honourable manager, of abridging lord Melville's means of income at the time. He stated, and certainly truly stated, that the noble defendant, who is now held up to the public as a corrupt man, sacrificing all principle, all duty to his interest, for the sake of amassing a sum, according to the summary calculation of the solicitor for the prosecution, (which I shall by-and-by examine) but even upon that exaggerated statement, screwed up to a total of profit throughout the whole period of four-

teen years, to 22,000*l.*; this same corrupt man, who basely, vilely, and wickedly forgot all his duty to the public and himself, and for the sake of this paltry sum, descended from his high situation, to mingle in these petty concerns, was at the same period of time voluntarily relinquishing his undoubted right to the legal salary annexed to the situation of secretary of state, to a much larger amount; the amount of the sum relinquished, appears in respect of one department, in the second volume of the Reports of the Committee of Finance, page 62, which is a public document, and to which I presume I may refer; but if it be the subject of the least doubt, it is capable of being, and will be made the subject of evidence before your lordships. There is in those reports stated to have been a saving to the public, by the voluntary renunciation of salary, by Mr. Secretary Dundas, to the amount of 5,933*l.* 10*s.* 3½*d.* in the home department; and this, my lords, only for one part of the period. With respect to the other department, the voluntary relinquishment of salary by this corrupt man, during the very same period of those corrupt transactions with Mr. Trotter, unnecessarily and voluntarily, while he was performing all the duties of this arduous situation, he forbore to receive the legitimate salary belonging to it, to the amount of 26,333*l.* 6*s.* 8*d.* which added to the former sum, make together, during the same period, a relinquishment to the public of 34,266*l.* 16*s.* 11½*d.* Now, my lords, surely I am warranted in saying that these are not vestiges of a corrupt, money-getting man, a man who was looking after his mercenary interest. What he might have received,—without the sacrifice of any duty, without the relinquishment of any trust, without any risk to his honour, to his character, or to the constant legitimate usage of the situations in which he was placed;—he voluntarily gives up to the public, exceeding in amount all that he is charged to have obtained by illicit profit, in the difference between 22,000*l.* the aggregate of gain he is stated to have made, and 34,266*l.*

These circumstances, I hope your lordships will bear in remembrance, in entering upon this subject; and if there should, in the progress of this business, appear to be circumstances of suspicion belonging to any part of the conduct of the defendant, if there are circumstances which are not easily reconcileable to that active, vigilant, and proper attention to pecuniary concerns of a private nature, which men in general observe, and which might particularly be expected in a person, who like the defendant, has filled considerable stations, and long been in habits of business, a subject so much dwelt upon by the honourable and learned manager; still I trust every charitable mind when driven to the alternative either of inferring these circumstances to have proceeded from a corrupt intention and plan of gain on the part of this noble defendant, or from a very considerable



degree of negligence, remissness, and improvidence in his private concerns,—the known features of his character at all times, and such as to a certain degree might be expected in any one, engaged as lord Melville then was,—will not hesitate to adopt the latter, as the more probable presumption under the circumstances of this case. May I not anticipate the opinion your lordships would be disposed to form upon the subject, had the question arisen in a civil case, or were it to be decided out of court upon the principles which govern rational and charitable men, judging of the conduct of each other? whether driven to the necessity of adopting one or other of the alternatives stated, you would not prefer the favourable conclusion rather than adopt so improbable a supposition as the one you are desired to authenticate by your judgment; that such an individual under such circumstances could have descended for such an object into the practices imputed to him? more especially, I am persuaded, will your lordships prefer that inference in a criminal case, the result of which is to be attended with such effects as a judgment of condemnation upon this subject must produce.

Permit me, my lords, to solicit your lordships to consider the case under one more general head, I mean that of a gross improbability. Is it to be conceived possible for any one, I had almost said in the language of the honourable and learned manager, above the degree of an idiot, to have embarked in this concern, in the manner and under the circumstances lord Melville is supposed to have done? Why, my lords, consider for a moment in the first place what was the risk attending the undertaking. If lord Melville and Mr. Trotter constituted this joint firm of mutual gain and profit, and if, with his lordship's knowledge, participation, authority, and connivance, Mr. Trotter was drawing large sums out of the public purse from month to month, for the purpose of laying them out in all the various speculations he engaged in; consider what was the situation of lord Melville, what was the danger to which he was continually exposed! In the first place he was responsible to the extent of his whole fortune for any loss which might have arisen from any pecuniary speculations of Mr. Trotter—In the next, the whole business from the very nature of it, was attended with very great risk of discovery, the execution of it constantly coming to the knowledge of a great variety of persons. It could not be carried on without drawing large sums of money out of the hands of the governor and company of the Bank of England, who your lordships will remember are all this time making use and profit of the public money deposited with them, without being supposed to transgress any law, or incur any offence. It is proved that when the Bank-notes paid at the Exchequer are brought into the Bank they are destroyed, by which so much of that

company's outstanding debt is for a time annihilated, and their means of discount and of issuing fresh paper increased; the larger the depôt, the greater is their capital, and of course their means of profit and advantage. This might naturally operate to quicken a commercial company, to look a little sharp after the state of their depôt. It is in proof too that from the manner in which the business of Mr. Trotter was carried on, other persons were employed in laying out the public money for his benefit. It is proved that *that* particularly intelligent gentleman in money matters, Mr. Mark Sprot, who was examined, was frequently and largely employed in the business; and he says that though he certainly had a belief and a knowledge that to a certain extent Mr. Trotter could have engaged in money concerns from his opulent connections, yet that the circumstance of his being paymaster enabled him (Sprot), to account for the very large extent in which he was monthly engaged in money concerns. My lords, was not this then an undertaking of infinite peril (I am now supposing lord Melville to have been purposely and intentionally concerned in it, which is the charge made against him), and must not the consequences of detection have infallibly been productive of the downfall and ruin of the noble defendant? He could never in such a case expect any mercy to be shown to him. It was obvious, that if ever it should be discovered, undoubtedly the minor offender would be protected, and made use of (as he ought to be if necessary) to give evidence against the greater. If therefore lord Melville was engaged in these foul transactions, all the risk was his.

Now, my lords, do I ask too much of your lordships, in presuming to suppose, that if your lordships could believe lord Melville to have been base, and mean enough to have been capable of bringing himself to engage in these corrupt transactions, without any restraint from principles of integrity or duty, yet that at least your lordships would expect to be satisfied, that there existed an adequate object for such conduct? Do men throw away their character, or even expose it to risk for nothing? My lords, what is the fact proved by Mr. Trotter? I take it now in the outline of his evidence, without entering into particulars; what is proved in the mass and in the general. For fourteen years this system is carried on; surely, my lords, if it was a joint concern, he who risks most ought to have most profit; he, who for the sake of lucre and gain, exposed to great hazard his high station, and the proud elevation of a great name and character, to engage as a dormant partner in these low pursuits, would at least expect to have secured for himself a very considerable share of the emolument. Now, my lords, what is the result? what is the account given by the prosecutor's own witness upon the subject? That throughout the fourteen years, and during the whole



period of these transactions, the whole profit arising from them was, as Mr. Trotter has described it, exclusively his own; so that we have my lord Melville giving his name, his countenance, his sanction, and his authority, to transactions of this description, attended with this risk, and his departure from all principle for the sake of pecuniary gain, and at the same time voluntarily, without a possible motive, giving up the profit unparticipated wholly to Mr. Trotter. Now, my lords, was there ever such an extraordinary union of generosity and avarice? sacrificing every thing that was dear and valuable in life for money, to the dereliction of all principle; engaging in pursuits most adverse to his nature, money-lending, stockjobbing, &c. to obtain it, and at the same time never during the whole fourteen years receiving or claiming any the least share of the profit arising from these pursuits, though it was in his power at all times to have enriched himself by them to any extent. This is certainly a new transaction in the history of the world, such as no man living was ever before engaged in. It is sufficient to state such a charge, to obtain a refutation of it. It is utterly incredible and absurd upon the face of it. I would only add, on this head of probability, with what little colour of justice this charge of corruption is made against the noble defendant. If money had ever been the object of the noble defendant's life, what opportunities had he for accumulating it? Recollect what during the greatest part of it has been his situation, what the stations he has filled, and at what periods. Consider the command of money he has had under his control, supposing him to have considered, as his accusers contend he did, the public money imprested to him, at his own disposal. It appears by the evidence, I think, that a hundred and twenty millions went through his hands, as treasurer of the Navy, and it is well known, that at any period, if money had been his object to the dereliction of principle, there was not a month in which he had not abundant and abundant opportunities, without the knowledge of Mr. Trotter, without the knowledge of any body who was not in his closest confidence, of accumulating wealth to any amount his avarice might have dictated. And yet, my lords, what is now at the end of his long services, admitted to be the state of his fortune, and the whole of what he possesses in the world? The utmost amount of any receipt of money, which has ever reached him in any shape, and from any quarter whatever, has been laid open to public inspection. And indeed the state of his fortune sufficiently appears from the proof of the manner in which he adjusted his debt to Mr. Trotter, upon the settlement in the year 1800. The efforts then made to gather together all he was worth, and scrape up all he could, by the assistance of an affectionate son, borrowing money for him to make good the sum he owed to Mr. Trotter, completely negative the

idea of any hidden treasure, or of any sum he had ever amassed throughout the whole of his long and laborious service.

My lords, I should hope that it would require under the circumstances I have stated, the most decisive body of evidence to raise a belief in any candid mind of the charge of corruption. But, my lords, let us see what positive body of evidence there is upon the subject. The first circumstance that is introduced as proof of corruption in lord Melville, is, the permission to Mr. Trotter to withdraw the money from the Bank and remove it to Mr. Coutts's house, and it is said that this was a corrupt transaction; that it was done for the purpose of making use of it to private emolument; that all the rest was cover, pretext, a veil, to remove it from one place to another upon pretence of official convenience, but that the real object and motive was private emolument.

My lords, I should think it would be quite sufficient upon this subject, without troubling your lordships with a detail of proof, or examining the evidence upon the subject, to say that all the hypothesis, all the reasoning by the honourable and learned manager upon this subject, consists, in this instance, as it does, if I have not misunderstood it, almost in every instance, that he has examined, of very ingenious arguments and reasonings, but unfortunately directly in the teeth of the evidence that the prosecutors have adduced in support of their charge. Upon this subject I have only to refer your lordships to the testimony of Mr. Trotter which is before you, which has directly negated the charge *in toto*. He swears positively, in the most direct and positive terms, to the negative of the purpose suggested of private interest or emolument, having actuated either party in soliciting or granting the permission for the removal of the money to Coutts's; he denies that such object was in the least discussed or adverted to by either party; nay, my lords, he has further expressly sworn to the best of his recollection, he had not even himself the object of emolument in view at the time he made the proposal to lord Melville. It can hardly then I think be said, that lord Melville could know of an intention in the mind of Mr. Trotter, which intention Mr. Trotter has denied upon his oath to have entertained at the time. I think, my lords, it can hardly be necessary to examine this charge further, when the prosecutor's own witness has positively and distinctly disproved it.

In opposition to this, my lords, are we to have recourse to arguments, and to be nicely examining the propriety of this permission and the alleged reasons for it, for the purpose of raising doubts by ingenious reasonings, and of attempting to show that the act carries with it internal evidence of the falsehood of the account given by Mr. Trotter? Is the prosecutor to be at liberty in this instance to reject the testimony of his own witness, that witness



whom the honorable manager, said your lordships were to believe in every word, and in respect of whom the honorable manager declared he should, as he has attempted uniformly to do, give confirmatory testimony in support of him? Your lordships must so declare, if you pronounce judgment in favour of this charge. Your lordships must say you disbelieve Mr. Trotter on his oath examined on the part of the prosecution, by reason of the circumstances that attended this transaction. Were those circumstances ever so strong, I contend, my lords, it would not be competent for the prosecutors to oppose them to the testimony of Mr. Trotter. A prosecutor cannot deal with his own witness in that way; he builds upon the testimony of Trotter, his charge stands upon it, he cannot pick out parts of his testimony and say this and the other part you shall believe, but whenever his testimony makes for the defendant you shall discredit it. Your lordships cannot upon such partial application of credit and disbelief as it serves the purpose of the prosecution or of the defendant, shift about with the same witness, believe him one minute and disbelieve him the next. The whole of this charge stands, and is stated to stand upon the testimony of Mr. Trotter, and he has positively denied it.

But, my lords, if your lordships were at liberty to look beyond his testimony, are there any such circumstances belonging to this transaction, as should induce your lordships to entertain any doubt of the account given by Mr. Trotter? on the contrary, when properly examined, do they not afford fair and rational inferences directly otherwise?

Upon this subject it seems to me that a great deal of fallacy has been introduced into the mode of considering this subject, by confounding what lord Melville did, with all the subsequent unauthorized use made by Mr. Trotter, of the legal, innocent, and proper authority that was given him; mixing the corruption of Mr. Trotter with, and attaching it to give a character to, the acts of lord Melville; assuming all the posterior acts of Mr. Trotter to have been with the gift of prophecy foreseen at the moment, and present to the mind of lord Melville, when he gave this permission, and so to qualify and characterize the nature of it. This erroneous view of the subject proceeds from that, which is so apt to mislead the mind in any retrospect of past conduct. When consequences have followed and are before the public, how frequent is the mistaken supposition that all of them must have been foreseen. Instead of carrying back the mind and judgment to the situation in which lord Melville stood in the year 1786, when applied to for his permission, his conduct is examined as if he had been in the situation in which any one now called upon to form a judgment of the subject would be, with his eyes open to all the transactions which have since happened to govern his judgment, and to direct it upon this point.

Again I would with great deference, submit that your lordships ought not to make the guilt or innocence of lord Melville in this transaction, depend on the criterion of the rectitude and propriety of the measure; whether to remove the money from the Bank to Mr. Coutts's was or not the wisest, the most proper, the most discreet, or the most prudent step to be taken to facilitate the distribution of the money among the several persons entitled to it, is not the present question. Whether, now that the mind has been long given to the subject, that ill consequences have been seen to arise from one mode of transacting the business after every intellect has been employed to contrive some other and better plan for conducting the same business, whether there may be suggested one less exceptionable, is not the question. If it were, a great deal of doubt might arise with respect to the policy, wisdom, and even the safety of that measure which has been lately substituted in the place of the one for which lord Melville has been so much censured. I do not say in the comparison which is the best mode, but I am certain of this, that the new mode is exposed to evils similar to those which have been experienced under the former; that a very considerable transfer of confidence thereby takes place from the treasurer to a subordinate, inferior to the paymaster, and a larger sum of money is intrusted to the control of an officer of inferior description. I mean the plan of supplying the sub-accountants with cash by means of the write-off, and the transfer of cash from the account of the treasurer to the account of a sub-accountant at the Bank. This becomes a private cash-account of the sub-accountant's own at the Bank, and he has the power to draw the money out the next minute. Suppose, for instance, 50,000*l.* transferred to the sub-accountant's account in the morning, he has a credit to that amount at the Bank; and if disposed to act dishonestly, or to make a profitable use of the money, he has as much the power to employ this 50,000*l.* in the interim before it is wanted for the public service, as ever Mr. Trotter had, under any authority that ever was given him.

But, my lords, let us inquire whether there was any thing in the nature of this proposal of Mr. Trotter's, to remove money for official convenience to Coutts's bank, that should have alarmed and excited suspicion in lord Melville; or rather that should have afforded to his mind decisive proofs of its being for corrupt purposes. Your lordships have heard a great deal of observation with respect to the transfer of duty from lord Melville to Mr. Trotter. It is said he seems to have abdicated the trust the public reposed in him; he had a salary for superintendence only, yet he omitted that superintendence, and it was owing to that negligence, which a public accountant ought not to be tolerated to say he was guilty of, that Mr. Trotter was enabled



to do what he did. I will not follow in detail this argument, because, as I have already observed, there is no charge against lord Melville in any of the articles of impeachment, of negligence or remissness; and therefore any observation on that head is foreign to the question. I shall only advert to it for the purpose of obviating any inference being derived from it in aid of what is in charge, namely, a corrupt intention, by showing how totally void of foundation any complaint against lord Melville is upon this subject. It appears in evidence before your lordships that this office, the duties of which lord Melville is supposed not to have properly discharged, by not having himself superintended and exactly watched the detail of the business, has always by the established usage of it been left to the paymaster. It is in evidence by the testimony of Mr. Bragge Bathurst, the witness examined by the prosecutors for the purpose of substantiating what were the duties of this office (a subject postponed to the latter part of the evidence for the prosecution), undoubtedly a gentleman of the highest probity, honour, and ability, that "the office was conducted by the paymaster; the practice (he says) of my predecessor, had been to delegate all the power to the paymaster by a general power of attorney; all pecuniary transactions were conducted by him; there were references made to the treasurer in particular cases, sometimes daily, but as to the payment and receipt of money that was conducted entirely by the paymaster; the paymaster acted without reference and completely performed all the duties;" surely then, my lords, no fair inference can be drawn to the disadvantage of lord Melville upon this subject; if under the pressure of his other duties he acted in the same manner as Mr. Bragge Bathurst, who had at the time no other office. But in addition to this, I hope I may refer to a public document, stating what was the nature of the duties of this office, certainly not drawn up with any disposition to favour lord Melville; I mean the tenth report of the commissioners of naval inquiry.

The treasurer of the navy is there stated "to be appointed by patent; he does not perform in person any of the official duties of his situation, but he nominates and appoints the paymaster, to whom he delegates the whole charge and conduct of the office by a general power of attorney; the other officers and clerks are also nominated by the treasurer; the paymaster is liable to be displaced upon the removal or resignation of his principal; but it has not been usual to remove the inferior officers or clerks except in cases of misconduct."

My lords, in addition to this, I would refer your lordships to the preamble of the articles of charge, to what has been stated upon this subject, which is now pressed against the defendant as a circumstance affording inferences

of criminal corruption. In that preamble this transfer of duty to the paymaster by lord Melville, is expressly recognised not only without censure, but in a way implying approbation. The preamble states it thus. "Whereas on the tenth of January, 1786, whilst lord Melville held and enjoyed the office of treasurer of his majesty's navy, he did constitute and appoint Alexander Trotter his paymaster, and the said lord Melville did on the 10th day of January, 1786, duly authorize and empower the said Alexander Trotter to draw on the governor and company of the Bank of England, for and upon the account of him, the said Henry lord viscount Melville, as treasurer of his majesty's navy, all and every sum and sums of money that then were, or should thereafter be wanted for the public services under the care of payment of the said lord Melville, the said Alexander Trotter being particularly careful to specify on each and every draft, the service for which the money should be drawn."

Now, my lords, I say this delegation of authority to the paymaster, is here by the prosecutor himself, stated to be a regular and proper act, and yet, my lords, by that act and not, as has been endeavoured to be shown, by the permission to remove from the Bank to Mr. Coutts's, did there originate that power of Mr. Trotter to draw from the Bank with unlimited power all the money that was there. My lords, did that power and control over the public money originate in any conversation, or a verbal authority to remove it from one place to another? No, my lords, if it was an improper act to give such a power, if it was improper to arm Mr. Trotter with an unqualified authority over the whole fund at the Bank, by which he could make the uses of it he did, whether it was or was not immediately deposited for a time at this or the other Bank, the general power over it and all the means of making use of it had been given before, by the power of attorney mentioned in the preamble. Nay, my lords, all the use that Mr. Trotter made of the public money, was under and by virtue of the general authority. Some of the money was placed *in transitu* at Mr. Coutts's bank, but a very large proportion of it, as the honourable managers have themselves proved, was never there at all, but directly drawn from the Bank and laid out. They have shown that many times when there was very little money at Mr. Coutts's; nay, even when Mr. Coutts's account made Mr. Trotter debtor, yet there was outstanding, that is short of the official balance at the Bank, to the amount of fifty, sixty, and a hundred thousand pounds. Why then, my lords, all the mischief, all the command over the fund, was derived under that which appears to have been the constant, uniform, unbroken, uncomplained of delegation of entire power and authority (continued even to this day) given in the regular course of duty and office to the paymaster. It may happen that a paymaster



may abuse his trust; it may happen that any subordinate in any situation may abuse it, but what was done by lord Melville was a proper and legitimate act; nothing of suspicion attaches upon the delegation of authority, because it was the course of the office to give it. Had lord Melville been in the situation of Mr. Bragge Bathurst, having no other concern of a public nature to attend to, still he would have been warranted in doing what he did: nay, his successor says he did it after him; and in questions put to Mr. Bragge Bathurst even now respecting the detail of the official duty, he fairly acknowledges that it was a subject not within his cognizance, and to which he could therefore give no direct answer.

Then, my lords, what inference of misconduct, if that had been the charge, and still more what inferences of a corrupt criminal intent are to be derived from this act, which is not only agreeable to all the established course of official duty belonging to this department, but which is stated upon the face of the impeachment, to have been a due, legal, authoritative act.

My lords, I shall entreat of your lordships to give us the benefit of this observation, when you are considering the question of law arising upon the construction of the act of parliament, which I have before discussed: for if this was a due and legal authority which the preamble states it was, it puts an end to the question of law. If it was competent, after the act of parliament had passed, to give to the paymaster a general power of drawing upon the account of the treasurer of the navy, all and every sum and sums of money, in the words of the power of attorney "which should thereafter be wanted for the public service:" how is it possible for the prosecutor, in the teeth of that averment by which he has stated that to be a due authority, now to contend it was an illegal one? the power of attorney was the authority, and the only authority under which Mr. Trotter acted. My lords, the verbal conversation that passed gave him no authority whatever, no fresh authority could it give him it must be an authority in writing under the statute. The authority therefore under which he acted, if he acted illegally, if he acted improperly, was that written authority which the honourable managers have authenticated, which they have stated to be a due authority in the very front and introduction of all the charges.

Your lordships will observe, that the written authority I have referred to, was undoubtedly restrained to the public service. The verbal authority that has been proved by Mr. Trotter, was limited in the same manner; I mean the authority to remove the money from the Bank, *in transitu*, and prior to its distribution to the other services, to a temporary deposit at Mr. Coutts's; it was in the same manner confined to public services: *That* is proved by Mr. Trotter.

My lords, this mode was proposed by Mr. Trotter, as he swore, for the reasons given for it at the time, viz. that it would facilitate official convenience, and that it would protect the money from the danger of losses; it is said that these are not good reasons, that they are not warranted in fact, for that the official convenience is not forwarded by it, and that the danger is not obviated; that the danger of conveyance was incurred afterwards by a million of money being drawn and conveyed from the Bank, by the order of the same person who made this proposition.—Now here again, my lords, is an instance of urging what was done by Mr. Trotter, under the authority given him, as an argument against the propriety, the reason, and the fitness of the authority itself. It is said that the difference of the Bank hours and the office hours, shows that this was an improper authority, for that the latter closes at two, and the other not till five. I cannot say that I enter very clearly into the force of that argument, for let the Bank continue open as long as it will, yet any body who is to be paid by a draft, must have previously got the draft from the office, and this he could not have got at a later hour than the office was kept open: it would be of no advantage to him to have the Bank open till five, if he could not have a draft from the office after two: but it is surely quite enough to rebut any inference of corrupt intention, that Mr. Trotter has sworn that he gave it as his judgment at the time to his superior, he,—the person most conversant with this business, and to whom it was natural to give credit on such a subject,—positively swears that he honestly, *bona fide*, and for the real object and purpose professed, and no other, did at the time, think and declare, that it would advance the public service, that it would be more convenient, the office having been removed from Broad-street to Somerset-house, to have as a depôt, a sum lodged at Coutts's bank, from which he could occasionally supply the sub-accountants, who were to distribute it; and with respect to the argument that has been urged so repeatedly, that the paymaster does not with his own hands pay any money, and therefore this must have been a pretence, that it is the sub-accountants only who pay; surely that will not appear to have any great weight in it, when it is considered what is the nature of the establishment of this office, and the course of payments in it. I include not the payments at the out-ports; they are regulated by a totally different mode, and that is the reason why there is a distinct clause in the act respecting the out-ports; because when money is issued to the out-ports, to carry on the service, it is by an order from the board, and the treasurer is immediately exonerated from all responsibility respecting it, and that is the reason why the clause is introduced into the act authorising the treasurer to go on in respect to the out-ports as he had theretofore done. But with respect to pay-



ments in London: for every one of them, made by whatever hand they may be, the treasurer is responsible as he is for money that is possessed by any of the sub-accountants to the extent of his fortune; and therefore it is proper matter of discretion with him, how much he will dole out from time to time, and deposit in the hands of any sub-accountant; in truth, all the payments originate with him; the direction of money through all its channels, the quantum of deposit at each place, the provision for each day, and whether there should be for any reason *toties quoties* remitted supplies in the course of the day to one whom he did not choose to trust with a large sum at one time,—all this is entirely in the discretion of the treasurer, acting through his paymaster who managed all the business; and therefore it might answer very proper, honest naval purposes, to have money deposited in the hands of a banking-house of the first credit in London, in order that from thence the paymaster might supply Somerset-house with the money that was wanted for all the naval purposes, as occasion demanded. He might think, too, such a mode of supply would obviate any inconvenience that had been before experienced, and the danger that had been incurred by bringing the money from the Bank, which had usually been done by common messengers, not by the principal money conductor of the office, as in the case of the million of money alluded to. But supposing all these reasons given by Mr. Trotter to have been bad, it would not alter the case; because Mr. Trotter has sworn they were his, and were stated to lord Melville to be his real reasons, at the time that the proposal was made, *bona fide*, with a view to these objects, and to these only, and that he had not any idea of profit whatever to be derived from it.

My lords, I would beg next to advert to what was much relied upon by the honourable and learned manager, upon this subject, the examination of lord Melville before the commissioners of naval inquiry, in which it is said lord Melville has acknowledged that he gave permission for the removal of the money, for the profit and emolument of Mr. Trotter; I do not exactly remember the words, your lordships will refer to them, but the examination is referred to as affording that inference from the mouth of lord Melville himself; that his object upon this subject was the profit and emolument of Mr. Trotter. Now, my lords, I submit that, adverting to the whole context, and to the manner in which it was understood, even by those to whom it was addressed, the examination does not fairly afford such an inference. Lord Melville there expressly states, that he did permit Mr. Trotter to lodge money drawn from the Bank for public purposes, in his private banker's hands, during the period it was not demanded for the purposes for which it was drawn; and when asked farther with respect to it, he says, that

if the whole monies necessarily drawn from the Bank, in pursuance of orders from the competent boards, were lodged in the hands of a respectable banker, under the control of the paymaster of the navy, it would add more facility to the conduct of the business of the office, in the multitude of small payments to be made, than if the money were deposited according to the constitution of the office, in an iron chest. I likewise (says he) had it in contemplation, that in the receipt of these various small payments made to such a variety of persons, they would be less liable to be imposed upon by that mode of transacting the business, than if they were to receive drafts for such small sums upon the Bank. Then he is asked (which is the question and answer relied upon on the part of the prosecution) respecting the permission to withdraw it, with a view of deriving advantage or emolument therefrom; he says, "If it is meant to ask me whether I ever gave any direct authority to the paymaster to use the money, in the manner above mentioned, I should certainly answer no; but I have no hesitation in saying that I believed and understood he did, and never prohibited him from doing so; and I believe it was so understood by others, at different times, when the establishment of the Navy-pay-office, was under consideration; when certainly no competent provision was made for the person exercising that trust of great extent and responsibility."\* From this passage it is inferred that lord Melville had a knowledge of Mr. Trotter deriving profit and emolument, from the removal of the money, and that that had operated as the impelling motive, and as one of the causes that induced the permission for that removal.

Now, my lords, the context fairly negatives this inference. It was clearly understood by the commissioners, to whom this examination was addressed, that my lord Melville meant entirely to qualify his permission altogether to the fair, honest, and legitimate purpose of carrying on the navy service. In their 10th report I observe the commissioners speaking of this examination, say, "Lord Melville states, that he certainly did permit Mr. Trotter to lodge any money drawn from the Bank, for public purposes, in his private banker's hands during the period that it was not demanded for the purposes for which it was drawn; but it is to be inferred from his evidence, that he intended Mr. Trotter to draw upon the Bank for the amount only of the assignments, made on him by the different boards, an account of which is furnished to him daily, and that the balance of such sum till demanded, should alone be lodged by Mr. Trotter, in the hands of his private bankers." And upon this subject the testimony given by the honourable manager, who spoke to the declarations made by lord Melville in the House of Commons, has offered to your lord-



ships an explanation of what sort of profit and emolument it was that lord Melville understood Mr. Trotter to derive from the removal of the money. I refer your lordships to the evidence of Mr. Whitbread upon this subject, which your lordships will find in page 105 to 108, wherein a variety of questions were put to Mr. Whitbread upon this subject, for the purpose of drawing an explanation of the sort of profit that lord Melville ever supposed Mr. Trotter to derive. I will not fatigue your lordships with going through all the series of questions and answers, but your lordships will find them ultimately terminating in this question and answer; "whether upon recollecting yourself upon this subject, you mean to state that the noble defendant admitted that he knew, or permitted any emolument to be derived to Mr. Trotter, from the public money, save and except what resulted from its deposit at a private banker's, for official convenience?" "The noble defendant stated, that he had allowed the money to be placed at a private banker's for official convenience, and when there he had allowed or permitted, or not prevented Mr. Trotter from making a private emolument of it, and that emolument arising from the interest he was to make of it from Mr. Coutts's." And on the next question being asked, "Whether the noble defendant admitted his consent or knowledge of any other benefit to Mr. Trotter from it?" He says, "The noble lord never said he had restricted Mr. Trotter from making advantage in any way, to the best of my recollection and belief." "The question is not whether he restricted him, but whether he said he knew of his having any other advantage; excepting the advantage before stated." "He did not say he even knew it, but only supposed it; he did not admit that he knew of any other.\*"

Now, my lords, I submit that taking this explanation of the declaration of lord Melville, coupled with the evidence of Mr. Trotter, the result is fairly this, that the permission to deposit money at Coutts's, was given at the instance and by the advice of the paymaster in the regular course of official duty; that it was expressly confined to naval services, and that it was given *bona fide* for the purpose of carrying on the public service; thoroughly persuaded, as lord Melville in his examination swears he was (which examination your lordships must take altogether) that it would facilitate the public convenience, that the money should be lodged at Coutts's bank, to be distributed in the mode proposed. Mr. Trotter confirms lord Melville in all this statement. As to Mr. Trotter's profit, the meaning of lord Melville as he explained it, and as is evident from the context is this, lord Melville never meant that Mr. Trotter's profit was the object or purpose for which the money was removed to Coutts's bank; but

being there, lord Melville imagined that from the deposit Mr. Trotter might derive a profit, agreeably to what has been proved to be the course of the Banks in Scotland, to allow a small per-centage upon deposits left at those banks, while they continue there. Mr. Trotter had a brother in Mr. Coutts's house, and lord Melville supposed that from money being there deposited, to be ready for the public service, for the honest purpose that I have stated, Mr. Trotter might derive a benefit similar to that allowed in Scotland. Now, I beg leave to ask, whether if this had been the true state of the case, there would have been any thing criminal, any thing contrary to law, any thing corrupt or improper in the conduct of lord Melville? I submit to your lordships there is not; recollecting always that I certainly do not mean to contend, as the honourable and learned manager supposed, that the form of the draft legalizes the draft, that drawing nominally for money for the current service, but really and intentionally drawing *alio intuitu* for purposes of private profit, would not be an evasion of the act; undoubtedly, I contend for no such proposition; the form of the draft cannot alter the case, or give legality to the act, if in substance the money was drawn for a private purpose. But I deny that either in form or in substance lord Melville ever authorised Mr. Trotter to draw upon the Bank, for any but a legal honest purpose, for public naval services; his written authority so speaks, his verbal authority so speaks, the evidence of Mr. Trotter so speaks, his own evidence speaks the same, all the evidence proves the same, and there is not the smallest tittle of evidence to the contrary. Mr. Trotter has been examined over and over again; he positively swears that at no one period did lord Melville ever authorise him to draw for money from the Bank, for any other purpose than the public service of the kingdom; that he never knew that he did so, and that lord Melville never was acquainted with any one of the illicit and improper uses to which, under a legal and proper authority, he (Mr. Trotter) contrary to his duty, without the knowledge of lord Melville, applied it.

My lords, I beg leave to refer your lordships to a passage in the evidence omitted before, [which was stated by the honourable and learned manager, and which affords additional proof that the guilty use Mr. Trotter made of the public money, was not by virtue of the parol permission, but the written authority. The honourable and learned manager stated, that it appears by the evidence, that at one time a balance of 209,000*l.* was transferred from the Bank, of which only 47,000*l.* was at Mr. Coutts's; all the difference therefore between 47,000*l.* and 209,000*l.* was money not at Coutts's; that in February, when there was not one shilling in Coutts's bank, and Mr. Trotter was their debtor, the outstanding balance used by Mr. Trotter, and which he had drawn from the Bank di-



rect, under the general written authority, was 216,000*l*. It is therefore quite clear that it was under the power of attorney Mr. Trotter principally acted, in the illicit use of the public money—that power with which every paymaster always had been, and still is armed. If it be too great and dangerous a power, that may be a proper subject of future regulation; but in giving that power lord Melville acted only according to the established course of the office, and Mr. Trotter's misconduct consisted in the abuse of it.

My lords, upon this head, of the permission given to draw money from the Bank, I hope I have relieved the conduct of lord Melville from all idea of corruption, and have shown that lord Melville had no intention that the money should go out of Coutts's bank, for any other than naval services; that his idea was, whatever benefit was to be derived by Trotter from it was the direct contrary of what Trotter in fact received, namely, that it was to be the result of the money lying dead in Coutts's bank, and only a premium to be given for its temporary deposit, and that it was to be drawn from thence for the public service, as occasion required. It is to be remembered, that the paymaster was no way restricted by any act of parliament, warrant, patent, or in any way whatever, from deriving such a benefit. If, consistently with the public interest, nay, if in a mode that facilitated and advanced the public interest, a casual, contingent, and collateral benefit, not operating to influence the removal of the money, but resulting from it in the course of an honest, legal, proper, convenient exercise of official duty, if I say there did result such a profit to a deserving officer, who was not restricted from receiving it, and who was very inadequately paid for the laborious and responsible situation he filled—I submit to your lordships, that to allow of such a benefit which is the utmost extent of imputation on this subject, resulting from all the evidence before your lordships, is not only stripped of all criminality, of all corruption, but likewise of every thing that can fasten any species of misconduct on lord Melville.

I shall conclude with observing, that if to allow of such a benefit could be deemed criminal, it could not affect the present question, because this is not the charge against lord Melville. He is charged with having been privy to, and approving of and participating in Mr. Trotter's use of the public money, which the examination of lord Melville not only does not prove, but establishes the most decisive negative to, as it shows lord Melville never to have been acquainted with the real uses made by Mr. Trotter, but to have supposed a profit, which it is proved he never made.

My lords, the transactions next relied upon in proof of corruption are the purchases of stock; of India stock, 13 or 14,500*l*. of the Loyalty, of 2,000*l*. India, and of 7,000*l*. three per Cents reduced.

I take, first, with your lordships' permission, the purchase of the larger sum of India stock, which was first brought forward by the honourable and learned manager. This was a transaction which took place, I mean the purchases were made, in 1789, 1790, and 1793; and this is now selected as the most prominent, the largest in amount, and the principal proof, upon which corruption is to be fastened on lord Melville. My lords, I will examine this transaction as it now stands, upon the prosecutor's own evidence, and I trust it will appear to your lordships' satisfaction, not only that there is not in this transaction the smallest appearance of corruption, but that it affords the most pregnant and decisive proof, that lord Melville was not the man he has been described to be; and that the charge imputed to him of a systematic plan of corruption with Mr. Trotter is wholly destitute of foundation.

The account of this transaction was opened distinctly by the honourable manager in the commencement of this proceeding, precisely in the same terms as Mr. Trotter afterwards proved it; at the same time that the honourable manager stated that your lordships were to believe every word that Mr. Trotter said, he was apprised of the account intended to be given of it, because he stated it in the terms in which the witness afterwards related it upon oath, in every part precisely tallying with the opening: save and except one expression which I unfortunately caught from the speech of the honourable manager, and which it was observed by the honourable and learned manager that I had slipped into the cross-examination of Mr. Trotter; I mean the expression "indignant rejection."—That which it was supposed I had put into the mouth of the witness, was in truth put into my mouth first by the honourable manager who opened the charge.

The account given by this witness of the transaction, your lordships will find in page 122 of the printed evidence in his examination in chief. The account is this: "I will state the transaction as far as my memory will carry me, which was in consequence of a conversation I had with his lordship, in which he stated his opinion of the value of East India stock, from the probable rise that would take place ultimately in that stock; and I observed to his lordship, that if he was impressed with so good an opinion of that stock, that I thought, in consideration of his own interest, he ought to invest a sum of money in that stock. His lordship's observations seemed to throw it aside, by saying that he had no money to invest in stock. I had mentioned to his lordship, that there were considerable balances lying at all times in my hands that were not called for, and in all probability would not be called for, from circumstances that I need not perhaps relate at this time; but it was money lying unclaimed in my hands, which it would not be necessary to ad-



vance to the public until it was claimed, and there was no prospect of that claim taking place soon; and I advised his lordship to give me leave to lay out so much of that money as would buy about 13,000*l.* or 14,000*l.* East India stock, but which his lordship refused in the most pointed and decided manner, inasmuch that I was afraid I had incurred his lordship's displeasure by proposing it: But it occurred to me at the same moment, that it would be possible to borrow a sum of money upon the security of that stock, and I proposed to his lordship that I should endeavour to do so, and that I should lay out that money in the purchase of East India stock, to which his lordship readily assented. I mentioned that I then lived with a relation of my own, who was a man of considerable importance in the city, and that he would be enabled to raise the sum of money for me. In short, I made it an easy matter to his lordship. But when I applied to Mr. Lind, the gentleman to whom I alluded, I found that I was deceived, and that it was not an easy matter to raise money upon that security; but I was unwilling to disappoint his lordship in what I had so sanguinely told him I could effect, and I never acquainted his lordship with the difficulty that had arisen; but I assisted Mr. Lind by advancing money from the public money, which I had the management of. I never had occasion afterwards to mention the circumstance to lord Melville until April in the last year, and he was perfectly unacquainted with my having made use of the public money in that transaction; and I charged his lordship a regular interest for the whole of the money which I advanced in that transaction, from the first day it was advanced until the final settlement of our accounts." Then he is asked:—

"Did lord Melville never inquire the name of the lender of that money?"—"I do not recollect that his lordship ever did. I had stated in such positive turns that Mr. Lind could do it, that I never found it necessary to mention the circumstance again to lord Melville, but took it for granted that he had thought I had concluded the transaction in the manner that I had supposed it could be effected."\* My lords, this is the narrative given by their own witnesses of this transaction in detail as it passed.

Now, my lords, I beg to ask, am I to take this to be a real transaction or a fictitious one? that is to say, was all this color, pretext, sham? Or does this narrative represent the transaction such as it really was? Which was it? If you say it is sham, it is pretence; your own witness is a perjured man, and yet you have said, we are to believe every word he says, opening this evidence in detail exactly as he has proved it. I think, therefore, it will not be denied, that I am to take this transaction to be a real one, to be as de-

scribed by the prosecutors' own witness precisely in the terms he has used. Now, taking it to be so, I ask your lordships—and entreat for a few moments your lordships attention—if this transaction does not furnish the most decisive negative to the charge of corruption, the most decisive negative to the charge of privity, which is made against the defendant, and connivance in the use, by Mr. Trotter, of the public money, that ever was afforded to any charge in any court of justice in the world? And this from a witness adduced by the prosecutor, under all the circumstances I have before stated.

My lords, in the first place, when does this transaction take place? In 1789, three years after the systematic plan of corruption had been going on between lord Melville and Mr. Trotter; during all which time lord Melville had been authorizing him, according to the averment of his accuser, for three years together, to make an unlimited use of the public money for their mutual benefit. Then, how do we account for this commencement of the business, that this Mr. Trotter, in a private conversation between him and lord Melville alone, where there was no necessity to put on appearances—no third person hearing what was passing—these two partners in iniquity, two persons who were daily going on in corrupt dealings with the public money, and had been going on so for three years together,—how do you account for this conversation? He begins talking upon the subject of East India stock; lord Melville upon this occasion, as he had uniformly in public in his place in parliament, and to every body in private, had announced his sanguine opinion of the future rise of India stock, and the growing prosperity of India affairs, in which his lordship, perhaps too sanguinely, expressed an opinion (he will allow me to say), that in process of time India would administer relief to England, instead of requiring it from England. An observation has been made upon the impropriety of this private opinion, delivered, it was said, by the president of the board of control, as if he had been taking advantage of some secret intelligence derived from that character to assist a speculation in India stock. On the contrary, it appears to have been nothing but what he had repeatedly and publicly declared in his place in parliament, and to all the world;—an opinion of the growing prosperity of the company's affairs, not a temporary, accidental, or immediate rise, but that which was expected to take place in future time from the future prosperity of the company. Upon his expressing this opinion, with whom originates the idea of purchasing stock? Mr. Trotter was asked this repeatedly: he answers, "I observed to his lordship, that if he was impressed with so good an opinion of that stock, that I thought in consideration of his own interest he ought to invest a sum of money in that stock."



Now, my lords, mark what is the first answer given by this corrupt treasurer, who has the command of the public money, 100,000*l.* balance then lying as is proved at the Bank, and under his own control and management, for which he had only to intimate a wish to become immediately possessed of the whole. He is supposed to have been at this time familiarized by habit, by inclination, by three years' practice, to the course of drawing upon that fund to administer to his own interest. What is the answer given?—an answer too in private, to that very person the agent, who had been the manager of all this corruption for three years together. What is his answer? "Go and take that money from the Bank—take it as you have done for three years together, and lay it out for me; there is the fund?" My lords, should we not have expected that to have been his answer? Instead of which we find his lordship's observation seemed to throw it aside, by saying that he had no money to invest in this stock. No money to invest in it!—Why did not his agent exclaim, "Why, my lord, what is the matter now? For three years together you have never had any of these doubts. Here is the fund you have been always using.—You have no money? Why here is 100,000*l.* of money you may have whenever you please. How can you have forgotten yourself so much, as to suppose there is not money enough at the Bank?" Yet, some how or other, even when it is suggested to him, the noble defendant had forgotten all he had been doing for three years, and *that*, too, with the very person with whom he had been conducting all this business. Mr. Trotter proceeds: "I had mentioned to his lordship that there were considerable balances lying at all times in my hands that were not called for, and in all probability would not be called for, from circumstances that I need not perhaps relate at this time; but it was money lying unclaimed in my hands, which it would not be necessary to advance to the public until it was claimed, and there was no prospect of that claim taking place soon." You mentioned to him—what is that new information to him? You mentioned to him—why, he knew it three years before—what are you mentioning to him? By way of novel information, you tell him what he had been acting upon for three years together; this you tell him as a secret in private. He next says, "I advised his lordship to give me leave to lay out so much of that money as would buy about 13,000*l.* or 14,000*l.* East India stock." You advised him to give you leave—why, you were one of the partners—why did you not go on as usual and do it?—what leave was necessary? It had already been given over and over, under the general power and authority you had three years before—what did you want a new leave for? But what is his lordship's answer to this? Oh, to be sure, go on as before, we have been jointly making good use of the

public money month after month, balance after balance—go on as you have done, to be sure—buy me, without delay, this stock? What, my lords, is the answer given by his lordship?—"but which his lordship refused in the most pointed and decided manner, inasmuch that I was afraid I had incurred his lordship's displeasure by proposing it."

Now, my lords, how is this reconcilable to the theory on which the impeachment is built? Why reject it? Why in this instance reject it? The first time a suggestion is brought forward, of that which he is all along supposed to have countenanced, adopted, and encouraged, for three years together, how does it happen that in this very instance—the first suggestion proved to have been made to him—he refused it in the most pointed and decided manner? still further this paymaster, this partner and accomplice in all his criminality and corruption, and who had (as is supposed) with his authority, from time to time, laid out thousands and thousands of the public money in every kind of speculation for their mutual benefit, says, I was afraid I had incurred his lordship's displeasure by proposing it. Why his displeasure? How is that to be reconciled with a constant previous privity and approbation of the very thing proposed? Why was displeasure to be incurred by what he was always encouraging, approving, and commanding? How is this to be reconciled with the charges in the impeachment? But what is next proposed? why, this same Mr. Trotter, knowing perfectly well (not a stranger who was not privy to) all that had preceded for three years, this same agent, proposes a substitute—in private with lord Melville alone—proposes to borrow money from a private individual to supply the treasurer of the navy, who had 100,000*l.* lying at command, over which, according to his usual course of business, he had the full control and power; why, should he on this occasion borrow money of a private individual? And yet this, Mr. Trotter says, he proposed and lord Melville acceded to. I mentioned that I had a relation, and so on; in short, I made it an easy matter to him. Then he describes his application to Mr. Lind, and the measures finally taken for raising the money.

My lords, opposed to this account given upon oath, by the prosecutors' own witness, what is the course taken by the honourable and learned manager who sums it up? His summing up of his own evidence, is an attempt to contradict it throughout. He adduces very ingenious observations upon the improbability of the transaction, as proved by Mr. Trotter. He states it to be a transaction, that he says, nobody above the degree of an idiot would have been engaged in; that upon the face of it, it is one, that could not possibly have gone down with any body; and he compares it to the case of a person offering a bribe to a judge, and afterwards, dropping



the condition, and presenting the money. These are very ingenious observations, but, unfortunately directly in the teeth of the testimony upon oath of his own witness. We have the observation of an honourable and learned manager, who speaks, it is true, with great authority, but not upon oath, opposed to the positive testimony of his own witness, who the other manager in opening the case, told us was to be believed in every word he says. What a singular contradiction is there here between the two honourable managers! the one, who opens the case, tells you to believe every word of this witness's narration, the other sums up and makes observations to induce your lordships not to believe one word of it. For if it be as the honourable and learned manager supposes, all sham, contrivance, and pretence, then the whole account given by Mr. Trotter is false; then we are not to believe a word that he says. Now which of the two managers am I to believe? The one who tells me I am to believe every word, or the one who tells me I am not to believe one word spoken by this witness? And yet in this dilemma are your lordships placed. Such is the state of the transaction selected as the first instance of lord Melville's corrupt confederacy with Mr. Trotter, upon which your lordships are to ground your judgment of condemnation against all probability, against all the surrounding circumstances which have been stated, presenting a general negative to the charge. Your lordships are besides to decide in favour of the accusation against the positive evidence of their own witness, the only witness, we have been told, who knows any thing upon the subject, disproving *in toto* every syllable and every suggestion in it. Your lordships are to lay all aside merely upon the suggestions, the theoretical and ingenious arguments of the honourable and learned manager.

But, my lords, it does not stop there. And now I beg leave, my lords, to adopt the expression of the honourable and learned manager, and to ask whether any person above the degree of an idiot would have done, what, according to the evidence, lord Melville is stated to have done in this transaction, supposing it one of the corrupt nature it is charged to have been.

My lords, I could have wished very much that the honourable and learned manager would have stated what his hypothesis is concerning it. We have heard the account given by the witness; what is your belief about it? Do you believe that money was lent to lord Melville to the amount of 23,000*l.* to enable him to purchase the stock? Your witness has sworn it. Do you believe it? Do you believe that, after it was lent, interest upon it was paid to the amount of 1,150*l.* a year from the first advancement of the money down to the termination of the settlement in the year 1800? Do you believe that? Your own witness has sworn it, and proved that the

interest was regularly debited to lord Melville as upon a private loan, and that lord Melville from year to year paid out of his own private pocket 1,150*l.* interest for the loan of this money. Do you believe that 3,000*l.* of the capital of 23,000*l.* originally lent was repaid by lord Melville? Your witness has sworn that of the 23,000*l.*, 3,000*l.* was repaid upon the loan, and 1,150*l.* annually paid for the interest of this advance, viz. 1,000*l.* a year after the payment of the 3,000*l.*, and 1,150*l.* before. In the account, which was given in evidence, containing the summary of supposed profit, calculated by the solicitor for the prosecution, in which he charges the defendant with 22,000*l.* profit on this transaction, credit is given to lord Melville for money paid to Mr. Trotter for interest due to Mr. Lind, the supposed lender of the money. The total of interest paid by lord Melville on this loan, according to the testimony given by Mr. Trotter, amounts to 11,500*l.*, besides the 3,000*l.* capital, making together 14,500*l.*, the sum lord Melville paid out of his own pocket at least upon the supposed reality of this transaction.

Now, I beg leave to ask any body, whether, if lord Melville was the corrupt man stated, and had been in this instance borrowing his own money, that is the public money over which he had the command, would any man above the degree of an idiot have paid 14,500*l.* out of his own pocket upon a contrary supposition? Nay, my lords, it does not stop there, for, at a subsequent period, lord Melville actually repaid the whole capital to, as he supposed, the person who had originally lent the money to him. It is positively sworn by Mr. Trotter that he never disclosed to lord Melville that Mr. Lind was not the lender of the money, till after the publication of the tenth report; and that in the year 1800, when lord Melville settled the concern, he actually repaid 20,000*l.* of the capital, in addition to the 14,500*l.* before stated; that is to say, 34,500*l.* has lord Melville paid upon the belief of the reality of this transaction, which your lordships are now desired to believe was all a fiction, all a sham, without the least evidence to warrant such a conjecture, and directly contrary to all the evidence given by the prosecutor himself upon the subject.

But, my lords, upon what theory—upon what principle is it that your lordships are to do away all this testimony, and in a criminal case? Upon the ground of a supposed improbability that lord Melville should have believed that money could be raised in the way proposed, viz. upon the security of the stock; and the honourable and learned manager stated that nobody above the degree of an idiot could have been imposed upon by such an account of the transaction; nay that a common advertizing money-lender would be laughed at and scouted for such a proposal; yet, says he, here is a noble person conversant with business all his life, represented



to have been imposed upon, and made to believe and act upon such a transaction as this.

My lords, the noble defendant has given the best proof that he believed it to be true, by paying the money which could only be due upon that supposition. You may theorize and speculate as you please upon what he did, and what he did not believe; but that is a more solid proof of belief than any thing your ingenious arguments can adduce against the reality of the transaction. But what becomes of all this theory, that nobody but a driveller would have supposed it practicable to raise money in this way? Is Mark Sprot quite such a driveller? Is he upon money matters quite such an ignoramus? I think your lordships have had a sufficient specimen of the caution with which he looks into the securities upon which he advances his money. Now this improbable transaction happens unfortunately for the observation to be a transaction exactly of a similar nature to one in which Mark Sprot is proved to have engaged. It appears that in the year 1800 he lent money upon stock alone, without any bond or security of any kind whatever; in that very mode, in which we are told nobody above the degree of an idiot would have supposed money could be obtained; and this to the amount of 50,000*l*. Now what becomes of speculation, theory, and ingenious reasoning against fact? Here is accidentally produced an instance of a gentleman conversant in money transactions, who has done the very thing that you are to suppose no man living, above the degree of an idiot, would have done.

But, my lords, with respect to this transaction does the history of it fairly afford any proof in the world, except the proof with what extreme carelessness upon money matters lord Melville acted? This transaction is pursued to its final termination. Travelling through the account of the stock and in whose name it stood, a question was put how was lord Melville to have been able to have realized any claim upon the stock, supposing it ultimately should turn out to be a beneficial concern, inasmuch as it did not stand in his name, and he had no voucher or paper to show it to belong to him. Now what is the fair inference from that circumstance? Is it not a proof in what a negligent and careless manner lord Melville conducted his money concerns, and surrendered them to the care and management of Mr. Trotter? My lords, undoubtedly if lord Melville had turned his mind to this subject; if he had been employing the public money in the purchase of stock for himself, to be sure he would have taken care not to pay interest upon it; to be sure he would have taken care to see that the stock stood in his own name, in order that it might appear to be his; or, if it stood in some other name, he would have taken care to have procured from that other person a declaration of trust, acknowledging that it belonged to him, and not to that other

person. lord Melville never inquired any more about it: "I never told him," says Mr. Trotter, "whose name it was in; it stood in Mr. Lind's name for a considerable time."

I would here again ask the honourable and learned manager what is his hypothesis on this subject? Do you believe lord Melville on this occasion sacrificed his duty and his honour for the sake of this stock; and then became so indifferent about it that he never inquired in whose name it stood; never looked after it at all? Is that the natural conduct which would have been observed upon your hypothesis? or is not more reconcileable with mine, who say lord Melville was a person totally withdrawn from all attention to money concerns; and in this instance has shown it by not having reserved to himself any power of following this stock, and making it his own, if it had happened that Mr. Trotter died, and his books were not forthcoming to prove the nature of the transaction? Undoubtedly lord Melville's name never appeared as the owner of any part of the stock, and his representatives could have had no means by which they could have substantiated his right to the stock, and shown it to be his own.

This transaction therefore, my lords, which is put in the front, which is brought forward as the largest in amount, and the most important instance of lord Melville's corruption—as the basis upon which your lordships are to build your judgments, and to pronounce the noble defendant a wicked and corrupt man,—stands now contradicted by the testimony of their own witness upon oath in all its parts; stands contradicted by the evidence resulting from the *res gesta*, and by the plainest and clearest proof. It is shown to be quite impossible, that three years after the commencement of this illicit traffic, had it existed, lord Melville should have held such a conversation with that very person with whom he is supposed to have been carrying on these corrupt practices at that time;—that he should consent to pay interest from year to year in 1789, 1790, 1793, and down to 1800, with the knowledge that it was the public money, and yet from year to year be treating it otherwise, and acting upon a contrary hypothesis. Surely, then, my lords, there must now be an end of suspicion hanging over the character of the noble defendant, when such a transaction is brought forward as the foundation of that suspicion; when we see such to be the effect of prejudice upon honourable minds, that they can be so blinded as to put this instance foremost as a proof of guilt, which, when fairly and correctly examined in all its parts, leads very impartial rational mind, attentively considering it, to a conclusion directly the reverse. If all the other instances were more disputable, if they were not open to the same decisive refutation, this one instance—I thank them for putting it forward—is worth a thousand, to fix at that time, and throughout the whole period covered



by it, the negative of the charges against lord Melville; that during the whole of this time, lord Melville could not by possibility, consistent with the account which is proved of this transaction, have had any knowledge, belief, or suspicion, that the money employed in it was public money, or that public money could legally or properly be applied to such a purpose.

My lords, the next transaction relied upon, as proof of the charge is the loyalty stock. This was a transaction in the year 1797. Your lordships will, in the first place advert to that date, which is eleven years posterior to the commencement of this corrupt confederacy between lord Melville and Mr. Trotter. Your lordships will also remember, that Mr. Trotter has proved upon his cross-examination (which I think the honourable and learned manager was pleased to state, had been conducted in so popular a manner) that the proposition he made in the year 1789, to lord Melville, for the purchase of East India stock out of the public money, which I have last discussed, was the only instance, in which he had ever made such a proposition to lord Melville. He was asked, was it then the only instance in your life, in which you ever proposed to lord Melville, to lay out the public money in the purchase of stock? this instance in which he rejected it (as you have stated) in the most pointed and decisive manner? and wherein for having made it, you feared you had incurred his lordship's displeasure? In answer to that, he positively swears it was; and yet your lordships are desired to say, that he uniformly throughout a period of fourteen years authorized Mr. Trotter to lay out the public money in the public stocks and on private security, and that the present is another instance of his having done so.

In the year 1797, your lordships will all remember,—it is matter of public notoriety,—what was the state of the public affairs. Your lordships will all remember, that it was a period perhaps of the greatest depression, that ever took place in this country: the public stocks were I think as low as forty-seven: there was a mutiny at the Nore, in the navy; the Bank had stopped their usual payments: it was a period when it was considered to be proper for public men to come forward, and assist the public credit in every possible mode that could raise the sinking and depressed spirits of the nation.

Will your lordships permit me to ask, whether this was a period, which a person desirous of enriching himself by purchase of stock, should have selected as the one most favourable for such a plan? one too who was in a situation to be most cognizant of the state of affairs? Eleven years had passed in which lord Melville never once had purchased stock, with the public money, in any of the periods most favourable to speculation, yet he is now supposed to have commenced his stock-jobbing at this period. How favourably with

a view to any pecuniary benefit to result from it, your lordships are told by the evidence, by which it appears that this stock, after it was purchased, fell as it was clearly foreseen would be the result, from ninety to seventy two, and was at a discount of eighteen per cent. This is but a very bad beginning of stock-jobbing speculations; you have managed badly to have been eleven years, and not to do better than this. Here is your first purchase, and eighteen per cent. loss upon it.

But, my lords, can we suggest no motive that should have induced a public man, at this time, to offer his name as a subscriber, to the amount of 10,000*l.* to the Loyalty loan, without having any pecuniary object in view? I need not resort to proof, for what is matter of perfect notoriety, that that illustrious statesman William Pitt, deceased, who has been so frequently alluded to, did, at the same moment, subscribe the same sum of 10,000*l.*—one certainly who was not very largely furnished with the means of possessing himself of funds to that amount. In truth your lordships in looking over a list of those who subscribed at that time, will perceive that public men in great situations, as well those who could conveniently raise the money, as those who could not, did, as was expected of them, come forward to aid the public credit with their names and subscriptions. Can any body doubt that this was the sole origin and motive for lord Melville's subscription? that it was not with the view to any benefit, but with the same view with which others in similar situations came forward, at a considerable loss to themselves?

Mr. Trotter has proved that in the origin of this transaction, it was not an act of his; that he gave no directions for, nor had any concern in the purchase of the stock, that he had even no knowledge of the purchase; so that this instance,—the solitary one, in which lord Melville is supposed to have made use of the public money to purchase stock,—is an instance to which the stock is clearly purchased without any communication with Mr. Trotter, who was the necessary agent to furnish the public money, if it had been intended to resort to that fund, and with whom all these corrupt dealings are charged to have been carried on. Does not this negative the charge? Does not this separate this transaction from the course of dealing between Mr. Trotter and lord Melville, and show that it was not of the corrupt nature supposed? It originated in another quarter, and the history belonging to it evidently refers it to another motive and another origin.

My lords, the stock being bought, and the first instalment paid, the course observed at that time by those who wished for a time to give currency and credit to this subscription, was to sell out their stock. The first instalment of lord Melville's subscription was paid, but the depression of the stock, to the amount I have stated of eighteen per cent, together



with the inattention of lord Melville to the subject prevented the immediate sale of the stock. Hence arose a necessity of paying instalments from time to time, during the year of 1797, as they became due.

Mr. Trotter has sworn, that without the knowledge of lord Melville, without the least communication to him, he advanced these instalments from time to time, as they became due. It is quite clear therefore that in its origin and progress, as far as I have stated, this purchase had nothing belonging to it, that has the least appearance of a corrupt transaction.

My lords, there is one piece of evidence before your lordships, which appears to me decisively to strip this case of every suspicion that might belong to it, of its being a corrupt transaction. My lords, it is proved that the last payment made upon the loyalty stock, was upon the 27th of September, 1797. Now, my lords, was it intended on the part of lord Melville, to continue to hold this stock for his private benefit, to make a profit and emolument of it?

My lords, by a document which is in evidence, but which happens just now to be mislaid, dated the 28th of September, the very day after the last payment, lord Melville authorized his banker, Mr. Coutts, to dispose of this loyalty stock entirely, to sell out the whole immediately, together with other stock for the purpose of repaying Mr. Trotter the whole of the money advanced upon it. The instrument that I allude to is this: it is dated Somerset-place, the 28th of September, 1797, and addressed to Messieurs Thomas Coutts, and company.

"Messieurs Thomas Coutts, and company,

"I have executed powers of attorney in your favour, to enable you to receive the dividends, and likewise for the sale of consolidated 3 per cents., reduced 3 per cents., and 5 per cents. 1797, standing in my name at the Bank; also for my India stock. And I desire that the dividends you will from time to time receive on these funds may be placed to the credit of Alexander Trotter, esquire's account; and that you will take any directions he may at any time give respecting the sale of all or any part of these stocks, and apply the produce in any manner he may direct: for which this is your authority."

Now the coincidence of the date following immediately the last payment is surely satisfactory to show that lord Melville considered this to be a private debt of his own, due to Mr. Trotter; that he supplied Mr. Trotter with the means of indemnifying himself for the whole amount of whatever had been advanced on this account.

My lords, I do not mean to omit noticing that these advances are stated by Mr. Trotter to have been carried to the Chest account, which was brought to and signed by lord Melville, and in which he is debited to the public for the amount of them; from whence an in-

ference has been drawn that lord Melville had knowledge that that public money had been furnished for the purpose of this stock. Now, my lords, I do not mean to say that lord Melville's signature to the account is not a circumstance in the case which fairly, to a certain degree, operates against us; but I submit to your lordships, it is capable of explanation, and that upon a candid consideration of all the circumstances, no inference will arise unfavourable to the honour and integrity of the noble defendant. The chest account has been erroneously supposed to be a public account. It was not so. It was merely a private account, under a particular denomination, but no more a public account than the account current was, only that it had a different title.

Where the weight of evidence is so strong against corruption, and against any intentional use of the public money by lord Melville; your lordships I am persuaded, will not suffer small circumstances to weigh on the other side; especially, if they are such as may be reconciled to a contrary hypothesis. There is no proof whatever before your lordships, that the items of that chest account, I mean the items in question, were ever read or observed by lord Melville, that they were ever pointed out to lord Melville, that any thing ever happened to call his notice or attention to any one of them. On the contrary, Mr. Trotter says, that lord Melville never could be brought to attend at all to his private affairs, though the contrary was the case with respect to such as were public; that he constantly signed the accounts brought to him, immediately, without examination; that he (Trotter) never did in his lordships presence, point out or call his attention to any one item contained in this account. And is it too much to expect of your lordships to believe that at a period like that of the year 1797, a public man, unpractised in accounts, and totally averse to them, with his mind occupied as it then was, in parliament and out of parliament, with the various important duties that belonged to the stations he then filled—considering too the entire confidence he reposed in Mr. Trotter personally—should have signed this account without reading the items, and should have never afterwards adverted to the account, as the fact unquestionably was, or have ever looked at an item of it? Lord Melville never could have been brought to believe that any man,—and least of all, one in whom he had so much confidence, would have done an act so contrary to the proper duty of an agent, as, after having advanced the money on his private account, and after he was possessed of private funds from lord Melville to the full amount, to cover him by way of security for the repayment of that money, to transfer these advances to the chest account, for the sole purpose of his own security, not only without any authority from lord Melville, but contrary to the strong and



decided disapprobation previously expressed by his lordship on the only occasion in which such an use of the public money had ever been proposed to him. I submit to your lordships that the whole history of the business is incompatible with original corruption, and that the progress of it is equally so; that lord Melville, after the provision made for the sale of the stock, and the repayment of all advances on account of it, had dismissed it from his mind, without ever adverting afterwards to the subject; as your lordships remember was proved to be the case with the India stock last considered, which, though unquestionably proved to have been purchased for himself, lord Melville never made any inquiries after. He never believed, or suspected, that any money supplied for the purchase, had ever come from the public purse; there is no direct proof that he ever did know it, notwithstanding the inference derived from the signature to the chest account. I submit that the weight of evidence on the other side, and the circumstances before mentioned are abundantly sufficient to induce every candid mind to believe it infinitely more probable, that the signature and the unsettled state of this business, till the final settlement in 1800, arose from that inattention and negligence which so peculiarly characterized lord Melville's conduct, in respect to all his pecuniary affairs, rather than to a mercenary or corrupt intention, which was so repugnant to his known character at all times, and so unlikely to have prevailed at this particular period.

Surely, my lords, it is not to be believed that lord Melville would, in this instance alone, have availed himself of the public money, which he rejected in every other; that he would in this instance alone have transgressed his duty, for the sake of profit, to which it was so little favourable; that he should sacrifice all his honour, character, and credit, in this one instance, and yield to a temptation, which in no other had ever in any part of his life appeared to have the least influence over him.

My lords, the next item of charge requires a much shorter consideration. It respects a small sum of 2,000*l.*, East India stock, relative to which the evidence given on the part of the prosecution by Mr. Trotter has proved only, that he had no recollection whatever of the nature of the transaction; that he bought the stock for lord Melville at the time stated, is perfectly true, but that this sum was bought with public money, with the knowledge of the defendant, or in consequence of any directions that he gave, or that there were not ample means supplied by lord Melville's private income for this purchase, there is not adduced the smallest tittle of evidence to prove; and therefore I shall not weary your lordships with travelling particularly through the evidence that respects this small item; more especially as I presume your lordships will rather be disposed to advert to the larger

and more important articles, in order to determine the guilt or innocence of the noble defendant.

With respect to the items of remittances to the houses in Scotland, of 2,000*l.* at one time; 1,000*l.* at another, and 3,000*l.* at another, I forbear to trouble your lordships with any observations. The witness examined respecting them has declared, that he has no distinct recollection as to the manner of these remittances, or the sources from which they were made: he says they constituted a part of his account current at a time when he was receiving and paying large sums for lord Melville. And I am sure your lordships will never, in the absence of all proof upon the subject, presume guilt, and take for granted that they were remittances furnished out of the public money, by the direction of lord Melville, and not from any of the legitimate sources of lord Melville's private fortune. I would only just refer your lordships to page 133 of the printed evidence, where upon the subject of these remittances, Mr. Trotter was asked, "Have you any reason to doubt but that the payments made upon that subject, were repaid out of the private funds of lord Melville?" The answer is, "I have no reason to doubt it, as there were frequent payments subsequent to that, and they went in reduction of the general account in which those sums were included."\* Then in the absence of all proof, on the part of the prosecution, that these remittances were made from corrupt sources, the charge must have fallen to the ground from the total negative of evidence to support it;—but it does not rest here, for the prosecutor's own witness upon cross-examination, has expressly disproved it, by stating that he verily believed the supplies for the remittances to have come from the private and legitimate sources of income belonging to lord Melville.

There was another transaction given in evidence, but not relied upon by the honourable and learned manager, I mean the loan of 4,000*l.*, upon bond without interest, by Mr. Trotter to lord Melville; I did not observe that this was stated to constitute an item of charge against us, by the honourable and learned manager, who summed up the case with so much particularity, for the declared purpose of drawing our attention to what we were to address the defence. Neither is it included in the account in which they charge us with the total of illicit profits. It would be enough to say of this transaction, that it cannot possibly be stated higher than a private loan, from one individual to another, and a private security given to cover it. The circumstance of the bond being without interest, the witness says, he never mentioned to lord Melville. It was a temporary accommodation, and repaid out of the account current in a short space of time. The sources from



which Mr. Trotter was enabled to supply that loan, he has fairly stated to be a fund to the use of which the paymaster was always by the course of office considered as entitled, viz. the money in his hands for the payment of exchequer fees, which has always constituted a separate fund distinct from that issued for navy services. There is therefore nothing in this transaction of corruption, on the part of the defendant, of misuse of public money, or any criminality whatever. It is a fair loan by one individual to another, of money which there was nothing to prevent being lent to any body. A private security was given for it, and the money was repaid in a short space of time out of the account current.

My lords, the only remaining article upon this subject of money transactions is the 7,000*l.* 3 per cents reduced, respecting which the evidence was extremely short; and I shall have occasion to trouble your lordships but a very few moments. The fact of the purchase of this stock by Mr. Trotter was proved on the part of the prosecution, in Mr. Trotter's examination in chief; and nothing more respecting it.

Now, my lords, in Mr. Trotter's cross-examination, the sole object on this, as on other subjects, was to supply by another question what was left short in the examination in chief. In the examination in chief the honourable managers procure a statement of one part of the transaction, in the cross-examination we obtained a statement of the remainder. This is all the merit of that popular cross-examination; but, my lords, very apt it is to produce a popular effect, when the whole of the fact comes out, and when it tends to disprove the inference that might have been drawn from a partial statement. My lords, the fact of the purchase was proved on the part of the prosecution; but your lordships will have the goodness to advert to page 131 of the printed evidence, in which the whole transaction is stated. Mr. Trotter is asked, "You stated that you directed stock, to the amount of 7,000*l.* 3 per cents to be purchased for lord Melville, was that purchase made by any direction from lord Melville; he answers, "It was made without any directions from his lordship." So much with respect to the purchase of this stock. Now for the means: "How came that purchase to be made without any direction from lord Melville?" "I made it in the general management of lord Melville's affairs; I believe a sum of money had come into my hand at that time for his lordship, and I thought it was proper to invest it in some manner to produce an interest to his lordship." "Am I to understand that funds had come into your hands, which before that time had been carrying a productive interest to lord Melville?" "I believe they had, either previously or a few days afterwards; one of the payments was, I think, upon a bill which might not have been due upon the very day I made the purchase,

but I believe the bill had come into my hands previous to my making the purchase."\* Now, here, my lords, is the simple account of this supposed corrupt transaction, related in part only in the examination in chief, but the whole disclosed in the cross-examination, and every possible suspicion completely negatived. The 4,000*l.* belonging to lord Melville Mr. Trotter had received, which carried an interest before in a productive fund, and this coming into his hands, as the manager of lord Melville's concerns, he thought it but due to him, but without his knowledge, to lay out that same sum of money (lord Melville's own money) in the purchase of 3 per cent reduced stock. How does this, in any respect, prove what is charged, that this was an instance of lord Melville's purchasing stock with the public money? It is unnecessary to observe how completely this imputation is falsified.

My lords, I have now travelled through all the items that have been brought forward of personal corruption in money matters, one by one. If there had ever been any other, I am sure your lordships will believe you would have heard of it. It is quite impossible that any art could have eluded the industry that has been used against the defendant. After all the transactions that have been investigated—all the books of account at Coutts's, and every other banker's in Scotland and England—all the private correspondence with them for twenty-four years back—all the sources of information that for months and months have been sifted and examined,—had there been one solitary instance to be found of stock purchased, or of any money transactions of any kind, in any quarter of the kingdom, in which lord Melville was engaged, undoubtedly the industry, the laudable and proper industry exerted in the prosecution, would have discovered it and brought it before your lordships. Why, my lords, how then, on these grounds, can any fair mind fasten upon the noble defendant the foul imputation of having been throughout a period of fourteen years, cognisant of and concurring in all the nefarious and corrupt transactions of Mr. Trotter? Your lordships are now to pronounce upon these articles, whether you have it proved before you, satisfactorily proved by clear, solid, and demonstrative evidence, that lord Melville from the beginning in 1786, to 1800, was the man he is represented to have been; and that in concurrence with Mr. Trotter, he connived at, authorized, and permitted the public money, to the amount of a hundred-and-twenty millions going through his hands, to be laid out from time to time for benefit, profit, and emolument.

It is decisive against the truth of this charge, that the prosecutor has not been able to adduce in support of it more than these few instances in all this long period—*rari nantes*



*in gurgite vasto*—these few instances, in which it has been possible to attach any thing even of suspicion against the noble defendant; still more, when each of these appears to be capable of clear explanation when attentively examined, and to afford inferences directly the reverse. Your lordships would reluctantly give way to the belief, that a public man, of lord Melville's rank and character, would have been guilty of the turpitude and the folly of risking every thing in transactions of a corrupt and degrading nature; particularly when he appears at the same time to have discovered in other transactions, a fair, honourable, and generous mind, acting towards the public in a way directly the reverse of sordid corruption, in a voluntary surrender to the amount of between thirty and forty thousand pounds of regular and legitimate salary, which he might have received without the least imputation upon his character or his honour. Your lordships would reluctantly have believed the charge, had it been supported by any thing short of the clearest proof. Your lordships are now relieved, by finding that the charge is established by no proof whatever, but directly negated by the evidence adduced to support it.

I beg your lordships' pardon a thousand times for trespassing so long upon your attention; but there is one subject more which constituted the last topic urged against the defendant as a proof of corruption; I mean the release and the destruction of the books of account, the subject of the sixth article of impeachment.

And, my lords, this is urged against the noble defendant in two distinct ways: In the first place, as constituting of itself a high crime and misdemeanor; and, in the next, as furnishing evidence of guilt—of the corrupt conduct of the defendant upon the principles that raise the strongest suspicions against the conduct of any one, who is found to have fraudulently destroyed those papers or documents in his custody, which would have afforded the means of discovering what the nature of his conduct had been.

My lords, in one word I will dispose of the first part of the charge, viz. that which treats the destruction of the papers and books of account as a distinct crime and misdemeanor. I deny, if the fact had been true in the utmost extent in which it is stated,—if the papers and books had been destroyed by lord Melville, and destroyed for the purpose of preventing the discovery of his corrupt dealings,—that it would have become any crime whatever. I deny it to be any offence, known to the law of England, for any individual charged with a crime, to destroy the evidence in his own possession that might operate to his conviction. In the instance put by the honourable and learned manager, of clothes destroyed to conceal a murder; that destruction by the prisoner himself, unexplained, would undoubtedly operate in evidence against him

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upon his trial, provided enough was known respecting the state of the clothes; but the destruction taken substantively and by itself, would constitute no crime. The offence, therefore, in the present case, if there be any, must be upon the ground of the nature of the papers and books destroyed, viz. of their being public vouchers and accounts, which the public had a right to possess—documents of a public nature, which a public accountant could not legally destroy: That is the way, I presume, in which it is meant to be charged as a crime and misdemeanor.

In answer to which, I have only to state that this proceeds upon a mistake in fact. The books and vouchers destroyed were not papers of this description; the evidence proves they were not. All the vouchers—all the papers—all the books destroyed either by lord Melville or Mr. Trotter were wholly private and not public: the private documents relative to accounts between themselves, standing in the relation to each other of principal and agent. They belonged to men indeed who had filled public situations, but they do not therefore become public documents; otherwise all the private books of account, all the private letters and papers of every public man would therefore become the property of the public, or the public would have a right to the inspection of them. Such were the vouchers and papers, and such the books; they had nothing of the character of public documents belonging to them, much less so than Mr. Douglas's books, which your lordships rejected upon the very principle of their not being public documents, but merely private. There is not any one circumstance to show that there has been destroyed any one single document of the nature specified. In order to show that there had been, there should have been some evidence given to prove what the nature of the documents was. Your lordships cannot ascertain this by conjecture, or presume they were public documents, if there be no evidence to show it: And there is not a tittle of evidence to prove, that any one public document of any description was destroyed by either party, either by lord Melville or Mr. Trotter. In the absence of all proof, therefore, there must be a total end of this part of the charge.

It only remains to consider, how far this destruction of books and papers, and the release afford, any evidence of presumption of corruption against the noble defendant. I certainly cannot wonder, that so much stress should be laid upon this part of the case; considering, that when there had been a total failure of all positive evidence on the part of the prosecution; when, at the close of their case, the honourable managers found all the positive testimony to break from under them, and to prove directly the reverse of the charges; when all Mr. Trotter's evidence had totally disproved the imputation of corruption, and shown every act of this nature to have been



exclusively his own, without any participation or knowledge on the part of lord Melville, then it is natural to have recourse to presumptions. Now, the utmost effect of presumptions in any case can avail nothing, if there be positive proof to the contrary. Presumptions can never be set up against positive evidence? What inference do the managers desire your lordships to draw from the destruction of these unknown papers? Are you to infer, for instance, from that destruction, that the 13,000*l.* East India stock was bought with the public money with the knowledge of lord Melville, when the positive proof given by the prosecutor has established the contrary? Are you to guess at the unknown contents of an unknown paper, because it is lost and destroyed? Can you form any presumption applicable to any particular part of the case? Or how is it to encounter the positive testimony of Mr. Trotter?

With respect to the instances mentioned to your lordships by the honourable and learned manager, in support of his doctrine of presumptions, they apply principally to civil cases. In a criminal case the rule of presumptions does not, I conceive, prevail to the extent stated by the honourable and learned manager. I should rather think a learned judge would be a little cautious in giving exactly such directions as were suggested in a capital case; that, solely from the fact of the destruction of the clothes, without any proof that those clothes were in the state they were suspected to be, however strong the evidence on other parts of the case might be, the judge would venture to state to the jury that they were at liberty to presume the clothes to have been bloody. If there was any proof that they were in that condition, their destruction might strengthen the evidence against the prisoner; but the destruction alone could not lead any tribunal to jump to so rash a conclusion. It is not, thank God, the custom to administer criminal justice in this country upon such principles. But what would be said with respect to these presumptions in such a case, if there came into the box a witness, produced by the prosecutor, who declared upon his oath that the prisoner at the bar was not the man who destroyed those clothes;—"I destroyed them for my own purpose—I destroyed them for reasons which have nothing to do with the guilt or innocence of the defendant—it was I that did it, and he has nothing to do with it:"—What would you say then to any presumption attempted to be drawn from such a circumstance? What would you say to such a presumption, if the destruction of the clothes was accounted for in a way consistent with perfect innocence? If it was proved that these were old worn-out clothes, which were no longer wanted, and that, antecedent to any imputation or charge against the prisoner, they had been, according to his ordinary and usual course, destroyed? What would you think

of any inference *then* being drawn from the destruction of the clothes to the disadvantage of the prisoner? And yet this is the true nature of the case before your lordships. With respect to the destruction of these papers and vouchers, all this evidence of presumption, which is raised to the disadvantage of the noble defendant, and which is to fasten upon him all this infamy and guilt, rests principally upon a letter, which, with your lordships' permission, I will read, and you will then see what fair inference or presumption it affords of the corrupt conduct imputed to him.

My lords, it is a letter dated the 30th of June, 1804; it is in answer to a requisition from the commissioners of naval inquiry to lord Melville, desiring to be furnished with the results of various accounts during his treasurership—accounts of twenty years, I think, preceding the date of this letter.

"Gentlemen; I have received your requisition of date the 26th instant. It is impossible for me to furnish you with the account you ask. It is more than four years since I left the office of treasurer of the navy, and at the period of doing so, having accounted for every sum imprested into my hands, I transferred the whole existing balance to the account of my successor." Your lordships will have the goodness to advert to this; there was a transfer of all the public account to his successor; for by the act of parliament all the account of the treasurer going out of office is to be handed over to his successor immediately; his accounts are made up to that time, and every document is left in the office, and all his accounts terminate with the time of his quitting the office: "From that time I never considered any one paper or voucher that remained in my hands as of the smallest use to myself, or any other person; and, consequently, being often in the practice, since I retired to Scotland, of employing occasionally some time in assorting my papers, and destroying those that were useless, I am satisfied there does not exist any one material by which I could make up such an account as you specify." This is the part of the letter relied upon, to prove against lord Melville a corrupt, fraudulent, and wilful destruction of the papers—a natural statement of what I presume would be the conduct of any person, who had quitted a situation for more than four years, without the least idea or suspicion of any anterior account he should ever be called upon to give; who had settled all his accounts, as it is proved he did, in the year 1800, with his private agent, Mr. Trotter, and all his accounts with the public. Is there any thing to excite suspicion, that under such circumstances, he should naturally, fairly, and in the ordinary course of his usual habits, occupy his leisure in the country, in disburthening himself of papers which he did not see to be of any probable future use?

It is proved by evidence on the part of the prosecutor, given by Mr. Trotter, that it al-



ways had been the habit of lord Melville, from time to time, to destroy useless papers, long and long before any idea of any accusation being brought against him. I desire, therefore, to ask, whether under these circumstances any fair inference can be drawn to the disadvantage of lord Melville, or any belief that he was destroying those vouchers for any wicked or corrupt purpose?

My lords, with respect to the dilemma that the honourable and learned manager thought he had reduced us to, by asking whether the papers or vouchers had been destroyed before or posterior to the release in 1803; I cannot say that I feel the difficulty. Unquestionably it appears before your lordships, that the vouchers and papers in question were destroyed long before the release. It appears that they related to the subject of a private account between lord Melville and Mr. Trotter, which was settled in 1800; and in consequence of that settlement, lord Melville (soon after going into Scotland) destroyed the vouchers and papers for which he had no longer any use. It appears by the release, and by the evidence given by Mr. Trotter respecting it, that these documents and papers had all upon that occasion been destroyed, and that the whole account prior to 1800 had been settled. This is the account which is spoken of in the release. The only account which is now unsettled is one that commenced in the year 1800, and has been continued since, and this the witness expressly proves to be an account in the possession of the honourable managers. I am not sure whether they have produced it. I do not recollect whether they have or not.—It was produced I understand, but it has not been put upon the minutes. I have no doubt it will be put on them; I am therefore at liberty to observe upon it. That account, which is proved to have been the only existing account at the time of the release, was commenced posterior to 1800, and consequently all accounts up to 1800 had been long before settled between Mr. Trotter and lord Melville; and upon that occasion, or soon afterwards, it was that lord Melville, according to his usual custom, when he retired into the country, from whence I believe he most reluctantly ever came back, during the period of his leisure employed himself in the destruction of papers, for which he foresaw he should no longer have any occasion. Now, from these circumstances which I have simply related, I am sure your lordships honourable minds cannot draw any inference to the disadvantage of the defendant.

With respect to the release, I shall trouble your lordships with only a single word or two. Upon this instrument much reliance has been shown, and much stress laid, to press into the case against the noble defendant every circumstance, however trifling or accidental, that could prejudice his case.

Now, my lords, was there ever a case in which presumptions were raised against a de-

fendant with less foundation than the present? Was the release the act of lord Melville? Was it his contrivance? My lords, here again Mr. Trotter, the prosecutor's own witness, comes forward, and completely exonerates the noble defendant. He expressly proves that the idea of the release originated entirely with himself; that at the time he thought of it he was in London; that long before the time, when its remarkable coincidence of date fixes upon it the principal ground of suspicion, he had proposed to lord Melville that a release should be given between them; that it was postponed for execution for some time, but it was revived in 1803, upon his own renewed suggestion, for purposes of his own—for purposes he was then meditating undoubtedly—I mean the subsequent destruction of his books. Mr. Trotter has never concealed that intent. It was for the purpose of concealing his own transactions, which were of a nature that he knew would not bear to be inquired into, that he (Trotter) armed himself with a release, to be executed by lord Melville then in Scotland. He swears, that upon that occasion he consulted a most honourable and respectable solicitor, Mr. Spottiswoode, a man of business, and a man of credit; and that the clause in question, respecting the destruction of vouchers, which has furnished so much observation, was a clause he believes suggested by that respectable solicitor, inserted with so little attention on his part, that he did not recollect its being there till it was recently pointed out to him. That a release so drawn without the knowledge of lord Melville, without his lordship's having seen the draft, without a correction of his in any part of it, was sent for execution to lord Melville in Scotland; and because this release happens to contain a clause whereby the parties to it declare that they have mutually delivered up for destruction, or propose so to do, their respective vouchers, it is to be presumed that lord Melville was conscious that the existence of these vouchers would prove something against him. Therefore, forsooth, he put this declaration upon record, registered it in a paper that was to be enrolled in the courts of Scotland:—For the purpose of concealing his guilt, he takes the best means of disclosing it.

These are the inferences to be drawn from this release. Lord Melville it to be supposed cognisant of every word in it, and to have had some purpose, what it was I profess myself totally unable to conjecture, or how it could affect the case whether that clause was inserted or not. The circumstance of each party being at a distance from the other, I presume suggested to that learned person who was consulted so to frame the release. But, supposing the parties had been together, and had mutually interchanged their respective vouchers, and had put them in the fire, as is common upon settling accounts, would any inference to the disadvantage of either party



have been drawn from thence? And what more is done by this clause in the release, by which each party agrees to put an end to vouchers which might give rise to a claim by the representative of one in case of death against the representative of the other?

I am sure I ought to beg your lordships pardon, for trespassing upon your lordships time upon a subject of this nature; or, supposing it necessary, after the evidence which has been given, to liberate the noble defendant from any possible imputation respecting it. Upon the subject of lord Melville's general inattention to his private affairs, and to his accounts in particular, which I have had occasion frequently to mention, I will not detain your lordships by repeating the evidence; but I will with all deference request your lordships to refer to the pages of the printed evidence, 130, 133, 134, 151, 155, 156, 157, 159, 162, and 164, as fully and strongly establishing this point.

My lords, I have now closed my observations on the charges and the evidence adduced on the part of the prosecution. I certainly do not propose on the part of the noble defendant, to offer to your lordships much, if any evidence. If it should be thought that any of the circumstances I have stated, not already proved, should seem more correctly to call for evidence, particularly that circumstance of the relinquishment of salary, it will occupy but a moment of your lordships time. Upon the general subject of the charge, it is not my intention on the part of the noble defendant to trouble your lordships with any evidence. I have heard it said, that if that should be the case, your lordships must convict the noble defendant; because, said the honourable and learned manager, upon the evidence as it stands, unless it can be answered by opposing testimony, the charge is made out against him.

I am sure the honourable and learned manager, when he made this observation, did not recollect what,—in respect to the transactions which he had truly stated, to constitute the main and principal part of the charge against the noble defendant, those that most affected his honour and his character,—had been opened by his brother manager in the outset of this proceeding, viz. that the case afforded no possibility of any further evidence; that the transactions involved in it could alone be known to lord Melville and Mr. Trotter; and the managers having exhibited the account given by lord Melville, and having produced the witness Mr. Trotter, have exhausted all the evidence that the honourable manager stated the nature of the subject admitted. To say, therefore, that without further evidence we are to be convicted, is, with respect to this (the principal) part of the charge, to hold out a certainty of conviction, from which we can by no possibility be redeemed.

But, my lords, I conceive with great deference that a defendant never can be called

upon or expected to adduce any evidence; nor should I, on his behalf, think myself warranted in wasting your lordship's time by the production of it, if I were prepared with ever so much written and parol evidence, when the testimony on the part of the prosecution had already proved the case of the defendant. It is quite enough for me to say, standing as counsel for a defendant in a court of criminal judicature, the prosecutor's evidence does not prove his charge: I have gone farther, by showing that his evidence directly disproves it. The principal testimony upon which the prosecution rested, the testimony of Mr. Trotter, has throughout cut up by the roots the whole prosecution, by negating all that was the foundation of it; the charge of confederacy and corruption, all is directly, positively, falsified by the principal witness, upon whom every thing rested, and to bring whom before your lordships, for the purpose of producing a conviction by his evidence, has been so great and favourite an object on the part of the prosecution, accomplished by such extraordinary means. I hope it will not therefore be said, that the defendant is destitute of proof, and that he rests his case upon argument only without evidence. No; he stands upon the best evidence, produced from the most unsuspected quarter. It is upon the evidence adduced by the accuser, under every possible advantage on his part that I have uniformly relied, as proving the noble defendant's case, and disproving that of the prosecutor.

Perhaps it may be said we might have recourse to general evidence, of a nature sometimes upon occasions like this adduced before this great tribunal. But, my lords, my lord Melville's conduct and character have long been before the public; it cannot be a secret to your lordships; and I am unwilling, where the evidence upon the fact is so clear, to protract the trial by descending to this species of evidence, or adducing the long and distinguished train of witnesses, who are ready to come forward and bear testimony to the character and conduct of the noble defendant in every department of the state which he filled, and to the high and unsullied honour and integrity, as well as vigour and energy, for which he was uniformly distinguished.

I cannot help feeling it to have been a little hardly said of the defendant, by the honourable and learned manager, that his private affairs prospered, while the public affairs committed to his trust, were uniformly ruinous and neglected. Is that a fair account of the defendant? Have his private affairs prospered, and have the public affairs committed to his trust fallen into decay? I will not pursue the subject. I will leave it to your lordships' honourable minds, to decide whether that is a fair account of the result of the noble defendant's long services to the public. I will only beg leave to observe, that even in the department of the Treasurer's office, your



lordships have heard that, all that has been imputed to the defendant of negligence, though not now in charge, might, with almost equal justice, be imputed to the two most honourable and respectable persons, who succeeded lord Melville in that office—lord Harrowby, and Mr. Bragge Bathurst.

For two years together, after lord Melville quitted the office, Mr. Trotter remained the paymaster, and continued the same practice of drawing from the Bank of England to a private banker's, and made the same private use of the public money. It surely therefore does not necessarily infer guilt—does not necessarily infer privity and corruption, that such transactions might be carried on by a subordinate, to whom all the detail of the business was by the course of the office uniformly left. Would it be matter of just blame in other high situations, for instance that of auditor\* where all the business is usually done by deputy, that the principal does not himself vigilantly superintend all that passes in the office? If the usual course of the office has been to leave it to the subordinate, and it does not appear that the principal has done less than his predecessors, ought it to be placed to the disadvantage of any that he has not done more? Ought this to be done in the case of one who was performing great and laborious services in other stations, without salary; devoting his time and talents at the same period, to the advantage and use of the public? But, my lords, can it fairly be said that the public concerns committed to lord Melville's trust, were neglected? Has any injury of any sort whatever been felt by the public? I do not mean to palliate, much less to defend the conduct of Mr. Trotter; but recollect they were his acts that are criminated, and not the defendant's, that there never was any circumstance naturally tending to attract the attention of the noble defendant; no interruption of public business, no delay, no loss, have ever happened to call for his interposition, to watch, inspect, and superintend; and it is proved by Mr. Bragge Bathurst, that he only interfered when referred to, but left all the detail of payments and receipts, to his paymaster. Surely then it will not be said lord Melville was culpable in doing the same, and in not interfering when his attention was not called to the subject. But can it be fairly said of the defendant, that he has neglected or abdicated his duty even in this department? when it appears in evidence, and indeed it was honourably and fairly, in a very candid and manly way admitted by the honourable manager who opened the charge, that so far from lord Melville having neglected the great and principal duties of his situation as treasurer of the Navy, that in the midst of all

his other occupations, still he bestowed the most vigorous and effective attention to the interests of the Navy, not indeed that he perused the details of official accounts, but that the higher parts of his duty were uniformly and successfully pursued with unremitting vigor. My lords, a just tribute has been paid to the merits of the noble defendant on this head, in language infinitely better than I can use, by the honourable manager; "I wish (he observed) to say every thing in illustration of good deeds," "to give them all the credit and all the praise which is their due."—"Therefore it is with satisfaction I say, that during the time Mr. Dundas was treasurer of the Navy, several most beneficial regulations took place in that office. That several acts of parliament were passed for the protection and defence of the unprotected and defenceless; I mean the widows and orphans of the brave seamen of this country, and for the allotment of wages to the wives and families of those who were fighting its battles, above all, that enactments were made through the instrumentality of the defendant; which have saved a number of lives from public execution." The act of parliament to which the honourable manager particularly alluded, was, that which has prevented the forgery of seamen's wills. "For that, and other acts, undoubtedly the noble lord demands the thanks of his country, and the gratitude of that meritorious class of men." These were the words of the honourable manager who opened the accusation, and yet, my lords, we are told by the honourable and learned manager, who summed it up, that his private affairs flourished and the public withered, under the care of my lord Melville.

My lords, I shall trouble your lordships with but a word or two more; the honourable manager who opened this case, truly told your lordships, that the defendant was tried by a tribunal which he himself had preferred. It should be recollected, that he had little option upon this subject, after he had behind his back been prejudged, and calumniated in every part of the metropolis and its vicinities, and before the public officers by whom the jury must have been convened for his trial, had it taken place in any other court. My lords, he preferred this proceeding because he thought that every one would be satisfied, that if the corruption and guilt imputed to him, had existed in any part of his life, it could not escape the vigilance, the industry, and the power that in this proceeding would be employed against him: he preferred it because he was sure that here he should have justice—that here he might justly appeal to that high honour which pervades every noble breast, and which the constitution has substituted in the place of the obligation imposed in inferior tribunals, and which would effectually secure him against any individual appearing to give judgment upon the subject, who would be liable to challenge as a common jurymen.

\* Lord Grenville, at the time of this trial held the office of auditor of the Exchequer together with that of first lord of the Treasury.



Upon the several questions of law which the charge includes, I have, my lords, endeavoured to submit the arguments that have occurred to me in the course of this case, and I have endeavoured to show that in none of the propositions of law, upon which the arguments are built, was the prosecutor well founded.

Upon the questions of fact, and particularly the main fact upon which all depends, of personal corruption, and corrupt confederacy with Mr. Trotter, I trust it has appeared to your lordships, not only that this case is not left in balance (in which event I am sure your lordships will feel that every intelligent tribunal would suffer the scales to turn in favour of innocence), but that fairly considered the great preponderance of evidence, I might almost say the whole of it, upon the main and principal parts of the charge, is altogether on behalf of the defendant. For all that is not in charge against the defendant, for whatever there may appear to have been of negligence or imprudence, or any other imputation, I should hope, my lords, that the bitterest enemy he has, would be satisfied, that he has already suffered an abundant measure of punishment, to which no further aggravation could be wished for, if it were competent or regular for any tribunal to inflict it.

My lords, your lordships are about to discharge a solemn and important duty, the highest and most responsible that can be exercised by man, himself about to stand before another tribunal, on a more momentous and awful inquiry and review.

Your lordships are to exercise this function in this august tribunal, the highest in the world, in the eye and in the presence of this great nation, and of the representatives of every other. Your lordships are to exercise it in the case of a defendant of exalted rank, and who, my lords, in the evening of his life, after a period of more than forty years, employed in the public service, has now all that is left to him depending upon the judgment which your lordships are to pronounce. To that judgment he looks forward with all the confidence that conscious innocence and a reliance upon your lordships' wisdom, justice, and impartiality, can produce.

I will trouble your lordships no further than to offer my humble thanks, for the great attention with which I have been honoured, and to request your lordships will accept my humble apology, for having so long trespassed upon your indulgence.

THIRTEENTH DAY.

Thursday, May 15, 1806.

The lords and others came from the chamber of parliament into Westminster-hall, in the same order as on the first day of the trial.

Lord Chancellor.—Gentlemen who are of counsel for lord Melville, you may now pro-

ceed in the defence, and the lords will be pleased to give their attention.

Mr. Plumer.—My lords, we now propose to call Mr. John Litchfield. The object of this evidence is only to the point I stated to your lordships, to prove the amount of salary to which lord Melville was entitled as secretary of state, and the actual amount of what he received.

Then Mr. John Litchfield was called in, and being sworn, was examined as follows:

Mr. Plumer.—What is your situation?

Mr. Litchfield.—I am one of the clerks in the Privy Council office.

Mr. Plumer.—What is the book that now lies before you?

Mr. Litchfield.—A volume of the Council Registers.

Mr. Plumer.—Turn to the order of council of the 27th February, 1795.—My lords, I understand it to be of some length, I wish only to have that part read, which fixes the amount of the salary of secretary of state.

Then the following extract from the Register, page 165, was read:

“At the Court at St. James's, the 27th February, 1795.

“The lords of the committee having fully considered the said report of your majesty's said principal secretaries of state, are of opinion, it may be advisable for your majesty to confirm such of the regulations respecting the said offices proposed by the commissioners appointed by the before-mentioned act, passed in the twenty-fifth year of your majesty's reign, as appear to be approved of by the said report of your majesty's said principal secretaries of state; and likewise, the further regulations and the scheme for the arrangement of their respective offices, (copies whereof are hereunto annexed), proposed by your majesty's said principal secretaries of state; and to direct the same to be adopted and carried into execution, except so far as relates to the proposition suggested by the report of the said commissioners, and concurred in by your majesty's said principal secretaries of state, in the case of a vacancy of one of the under secretaries of state, upon which point the lords of the committee will take leave to offer their opinion in the proper place.

“And the lords of the committee do agree further to report as their opinion to your majesty, that with respect to the salaries of the principal secretaries of state, such salaries should be 6,000*l.* per annum, clear of all deductions, and in lieu of all former salaries and fees, and that this arrangement should be considered as taking effect from the 12th of January, 1792, with regard to the right honourable lord Grenville and the right honour-



able Henry Dundas : and with regard to his grace the duke of Portland, from the date of his grace's appointment to be one of your majesty's principal secretaries of state."

Mr. Plumer.—Your lordships will be pleased to observe that that entitled the noble defendant to receive a salary of 6,000*l.* a year, commencing the 12th of January, 1792. There is an additional entry we wish to have read ; the passage before read stated what was fit to be done, this is his majesty's confirmation of it.

Then the following extract was read from the same Register, page 68 :

" His majesty, taking the said report into consideration, was pleased, with the advice of his privy council, to confirm such of the regulations respecting the offices of his majesty's principal secretaries of state, proposed by the commissioners appointed by the said act, passed in the twenty-fifth year of his majesty's reign as appear to be approved of by his majesty's said principal secretaries of state ; and his majesty is likewise pleased, with the advice aforesaid, to approve and confirm the further regulations proposed by his majesty's said principal secretaries of state, with the exceptions above stated in the said report of the lords of the committee of privy council, and to order, as it is hereby ordered, that the same be adopted and carried into execution ; and the right honourable the lords commissioners of his majesty's Treasury, and his majesty's principal secretaries of state, are to give the necessary directions herein as to them may respectively appertain."

[The witness was directed to withdraw.]

Mr. Plumer.—We wish now to call William Pollock, esq.

Then William Pollock, esq., was called in, and being sworn, was examined as follows :

Mr. Plumer.—Are you the chief clerk of the secretary of state in the home department ?

Mr. Pollock.—I am.

Mr. Plumer.—How long have you been in that situation ?

Mr. Pollock.—Forty-nine years.

Mr. Plumer.—Did it fall within your department and duty, as the chief clerk, to pay the salaries that were due to the secretaries of state for the home department ?

Mr. Pollock.—Constantly.

Mr. Plumer.—From the 8th of June, 1791, to the 12th of January, 1792, did you pay any salary to Mr. Dundas ?

Mr. Pollock.—I did not.

Mr. Plumer.—From that time to the 10th of July, 1794, did you pay him any salary ?

Mr. Pollock.—I did not.

Mr. Plumer.—If any salary had been de-

manded by my lord Melville during that period of time, would it have been in your department to have paid it, and must you have known it ?

Mr. Pollock.—I should think so.

Mr. Plumer.—During that interval have you accounted to lord Melville for any fees ?

Mr. Pollock.—Yes.

Mr. Plumer.—To what period have you so accounted ?

Mr. Pollock.—To the 11th of July, 1794, when his lordship removed to the war department.

Mr. Plumer.—Was he entitled, down to the period of the order in council, to the salary exclusive of the fees ?

Mr. Pollock.—Yes.

Mr. Plumer.—What is the amount of that salary to which he would have been entitled during that period, prior to the order of council, from the month of June, 1791, to the period of the order of council ?

Mr. Pollock.—Upon the nearest calculation I could make it would produce 2,715*l.* 2*s.* 10½*d.*

Mr. Plumer.—From that period to the time of lord Melville's going to the war department ?

Mr. Pollock.—14,958*l.* 18*s.* 1*d.*

Mr. Plumer.—State the amount of fees which had been received prior to the order of council, which are to be deducted from the sum you have given ?

Mr. Pollock.—The amount of fees received by his lordship to the 12th of January, 1792, is 832*l.* 8*s.* 5½*d.*

Mr. Plumer.—Are those fees which arose prior to the order of council ?

Mr. Pollock.—Prior to the 12th of January, 1792.

Mr. Plumer.—That order in council had no effect whatever upon the right to receive these fees.

Mr. Pollock.—None.

Mr. Plumer.—Take the amount of fees subsequent to the order of council, and which are to be deducted from the sum before given.

Mr. Pollock.—The sum total of the fees was 12,958*l.* 4*s.* 4½*d.* The expences of the office in that interim deducted therefrom being 3,932*l.* 16*s.* 6¾*d.*, left 9,025*l.* 7*s.* 9¾*d.* clear to his lordship.

Mr. Plumer.—Was that the nett amount of fees subsequent to the order of council ?

Mr. Pollock.—Yes it was.

Mr. Plumer.—What is the total amount of the money relinquished to the public in the account you have been giving ?

Mr. Pollock.—5,933*l.* 10*s.* 3¼*d.*

Mr. Plumer.—Is that sum the amount of what was given up to the public subsequent to the order of council ?

Mr. Pollock.—I think so.

Mr. Plumer.—I think you said that the amount relinquished before the order of council was 2,715*l.* 2*s.* 10½*d.* Is that so ?

Mr. Pollock.—It is so.

Mr. Plumer.—What is the total amount of



those two sums given up in this department as secretary of state for the home department?

Mr. Pollock.—The two sums added make 8,648*l.* 13*s.* 2*d.*

Mr. Plumer.—Has the whole of that sum 8,648*l.* 13*s.* 2*d.* been saved to the public by this relinquishment.

Mr. Pollock.—It has.

Then William Pollock, esq., was cross-examined as follows:

Mr. Whitbread.—During the time that lord Melville received any fee or emolument whatever, was it paid to him through you?

Mr. Pollock.—His lordship frequently gave me orders for payment, and received money of me.

Mr. Whitbread.—Was it in the routine of your business to receive such salaries and fees for lord Melville in the secretary of state's department?

Mr. Pollock.—It was.

Mr. Whitbread.—To whom did you pay what money you did pay on his account?

Mr. Pollock.—Sometimes to his lordship's banker, at other times to his order, at other times by verbal orders.

Mr. Whitbread.—Can you swear that the calculations you have made of the sums relinquished by lord Melville are accurate.

Mr. Pollock.—I may be subject to error, but they are as accurate as I could make them.

A Lord.—Have I understood you rightly in saying the order of council bore date the 27th of February, 1795?

Mr. Pollock.—Yes.

A Lord.—And that the fees were to be relinquished from the 12th of January, 1792?

Mr. Pollock.—It is so directed in that order of council; that, with respect to the secretaries of state, they should have that allowance of 6,000*l.* a year, clear of all deductions and in lieu of fees, and that with respect to Mr. Dundas (now lord Melville) it should have a retrospect from the 12th of January, 1792.

A Lord.—Am I to understand you that lord Melville received 6,000*l.* a year from the 12th of January, 1792?

Mr. Pollock.—No, his lordship received short of that money; 5,933*l.* 10*s.* 3*d.*

[The witness was directed to withdraw.]

Mr. Plumer.—My lords, I wish now to call James Chapman, esq.

Then James Chapman, esq., was called in, and being sworn, was examined as follows:

Mr. Plumer.—Are you the chief clerk in the secretary of state's office for the war department?

Mr. Chapman.—I am.

Mr. Plumer.—Were you so in the month of March, 1795?

Mr. Chapman.—Yes.

Mr. Plumer.—Were you the person through

whom the salary due to the secretary of state in that department would have been paid.

Mr. Chapman.—Yes.

Mr. Plumer.—How much, in point of fact, of salary did you pay to lord Melville as secretary of state for the war department?

Mr. Chapman.—I do not know the total amount that I paid; I paid lord Melville his salary at the rate of 2,000*l.* a year, from January, 1795, to June, 1800, and at the rate of 4,000*l.* a year, from the 1st of June, 1800, to the time lord Melville resigned the seals, in March, I believe, 1801.

Mr. Plumer.—What was the amount of difference between what lord Melville was entitled to receive and what he actually did receive?

Mr. Chapman.—My lord Melville relinquished from July, 1794, to the time he resigned the seals upwards of 26,000*l.*

Mr. Plumer.—Are you now speaking of the war department only?

Mr. Chapman.—Of the war department only.

Mr. Plumer.—This has nothing to do then with any relinquishment in the office of secretary of state for the home department?

Mr. Chapman.—No.

Then James Chapman, esq., was cross-examined as follows:

Mr. Whitbread.—Were you the channel through which all lord Melville's salary such as he did receive passed?

Mr. Chapman.—Yes, in the war department.

Mr. Whitbread.—Did you account with lord Melville for that salary?

Mr. Chapman.—Yes.

Mr. Whitbread.—Was there any part of the additional salary, stated by you to have been relinquished by lord Melville, ever tendered to his lordship?

Mr. Chapman.—It was withheld in consequence of lord Melville's direction to me not to pay it to his account.

Mr. Whitbread.—When did you receive those directions?

Mr. Chapman.—I presume when the first quarter's salary was due, when I asked lord Melville whether I should pay it or what I should do.

Mr. Whitbread.—Do you know of any reason why that salary was not received by lord Melville, or not paid to him in the same manner as it was paid to other secretaries of state?

Mr. Chapman.—I believe because lord Melville conceived himself receiving 4,000*l.* a year as treasurer of the navy; he therefore received 2,000*l.* a year as secretary of state, making in the whole the salary of 6,000*l.* a year, which was the salary allotted to the secretary of state.

Mr. Whitbread.—Had lord Melville for both offices, the treasurership of the navy and the other office, received 6,000*l.* a year?



Mr. *Chapman*.—I can only speak to my own department from that he received only 2,000*l*.

Mr. *Whitbread*.—What salary did lord Grenville receive from the same office?

Mr. *Chapman*.—I do not know.

Mr. *Whitbread*.—Were you not chief clerk when lord Grenville was secretary of state.

Mr. *Chapman*.—I am in the war department.

Then *James Chapman*, esq., was re-examined as follows:

Mr. *Plumer*.—Might lord Melville, if he had been so disposed, besides his salary as treasurer of the navy, have received the full 6,000*l*., as secretary of state for the war department?

Mr. *Chapman*.—I conceive undoubtedly so.

Mr. *Plumer*.—Had you authority, and would you have paid it if it had been demanded?

Mr. *Chapman*.—Certainly.

Mr. *Plumer*.—Was there any reason for your non-payment of the money but the voluntary relinquishment by lord Melville which you have stated?

Mr. *Chapman*.—None other.

[The witness was directed to withdraw.]

Mr. *Plumer*.—My lords, this is a matter of figures. I would only beg to call your lordships' attention to those two sums that have been proved by these witnesses, to the amount of 8,648*l*. 13*s*. 2*d*. in the home department, and to the amount of 26,081*l*. 7*s*. 5*d*. in the war department; added together, they make the sum of 34,730*l*. 0*s*. 7*d*. relinquished by lord Melville, and saved to the public.

Mr. *Adam*.—My lords;—The time has now arrived, when I am to approach your lordships in the discharge of this most awful and most important duty. It is a duty which, from various circumstances and events in my life, and various recollections, is peculiarly awful to me; and it is rendered still more so by the emphatic eloquence, and the powerful argument which has preceded what I am to advance to your lordships.—My lords, I trust that I shall have coolness and composure to collect my thoughts, and to state them with accuracy; and the best return I can make for the favourable attention of your lordships is, not to delay you with any thing but what is completely to the point.

My lords, I shall first take the statute into consideration; not because it lies directly in order in point of time, but because it is important to discuss the law as an abstract proposition unconnected with the fact, and because I wish that the discussion of the statute should not interfere with the narrative of facts, and the argument upon that narrative which forms the great ground of defence.

But before I state the observations which I shall submit to your attention upon the construction of the statute of the 25th Geo. 3rd.; let me intreat your lordships to recollect

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and to bear in your minds through all the various ramifications of this important case, that the noble and eminent person whose fate is now to be decided by your lordships is, at this moment, and has been from the day he left the office of treasurer of the navy, in the situation I am about to state.

He does not owe one farthing to the public; he has paid up every sixpence that has been imprested into his hands; and not only has he done so, but your lordships will never fail to recollect that no branch of that duty, which he discharged as treasurer of the navy, has at any time met with any impediment;—that the public has suffered no loss;—that the persons who were entitled to payment, never had their payment postponed, for one single moment, even to the amount of a farthing. My lords, this is a most important feature in the case, and it is well not only that it should be impressed upon the minds of this high tribunal, but that the fact should likewise be known by a watchful and anxious, although, as I trust I shall show your lordships, a misled public, to the remotest corner of this united empire.

The act of parliament which I have to state to your lordships, was the work of the noble defendant, and he is now accused of having been the breaker of his own law. My lords, it is important that before your lordships find him guilty of being, as the managers contend, the breaker of his own law, your lordships should thoroughly understand what that law imports.—And I will venture to say, that unless there is a determination to have recourse to matter which cannot be legally forced into the construction of an act of parliament—matter which no court of law could listen to as a rule for construing a statute—he cannot be held to be the breaker of this law. If this act of parliament is to be construed by that which lies within the statute (the words being clear and distinct), and not by extrinsic matter, or by the supposed history of the law, the reports of the commissioners of accounts, and the resolutions of the House of Commons, there has been no violation of the statute, and your lordships, I am confident, will decide (notwithstanding the threats held out to us of being brought to shame upon this point), that the law is distinctly what we represent it to be; namely, that there was no obligation upon the noble lord, as treasurer of the navy, to withhold from drawing out, when the time of service arrived and was signified to the treasurer of the navy (under the proper assignment, from the proper board), the money placed in the Bank, by virtue of the act of parliament.

This act of parliament, as it respects this particular subject, consists of two parts; and these two parts are distinct in their nature; the first part of the act of parliament is to secure the payment of the money to the Bank, in its issue from the Exchequer; the second part of the act of parliament is, to permit that mo-



ney, for the purposes of the public service, to be drawn from the Bank of England.

Now, my lords, here are two considerations; the first is the regulation (if I may use the expression) or the contrivance of the channel by which the money, in its *transit* to the Bank, shall find its way safely to the account of the treasurer of the navy, in the Bank. The other branch is, that it shall be at the call of the treasurer of the navy, or of his properly appointed deputy, the paymaster, for the purposes of the public service.

Now, my lords, let us see how the legislature, upon the motion of the noble defendant, set about accomplishing these objects.

If your lordships will look to the first clause of the statute, you will find the most anxious regulations for the purpose of placing the money in the Bank.

In the first place the treasurer, merely as treasurer, is to apply by letter to the proper office, for the order to require an issue of money; namely, to one of the three departments of the naval service, of which your lordships have heard so much, the Navy, Pay, or Victualling branches. This was meant as a check on the treasurer, in order that no more money should be drawn for from the Exchequer, than the public service required; for you will always recollect, that the grievance proposed to be cured, was the public money being called for before it was wanted, and its being kept after the time when it ought to have been paid.

Next, the treasurer's memorial is to contain a prayer, that the money shall be paid to the treasurer's account in the Bank; thus the treasurer is put under check as to the amount.

The Treasury is the next object of consideration, in the act. That board is required to call on the Exchequer to pay to the Bank; and the Exchequer, being the next instrument, is called upon by the clause of the act to pay the money into the Bank direct. It will render this somewhat more perspicuous, if I state the provisions in this section.

"The treasurer of his majesty's navy for the time being shall, in all his memorials, pray that such sum as he requires shall be issued to the Governor and Company of the Bank of England, on his account, and shall transmit with each memorial a copy of the letter or letters from the commissioners of the navy, victualling, and sick and hurt boards, directing him to apply for such sum or sums; in which letter or letters the said commissioners shall, and they are hereby required and directed to specify for what particular service or services the said money is wanted, and shall also state the balances then in the hands of the treasurer of the navy, under each head of service respectively; and the commissioners of his majesty's Treasury for the time being, by their letter, from time to time, shall direct the auditor of the Exchequer to issue to the Governor and Company of the Bank of England."

Your lordships observe, therefore, that in both these instances it is provided that the instruments who are to set the money in motion in its *transit* outwards to the Bank, are to send it directly to the Bank, on account of the treasurer of the navy; and the Governor and Company of the Bank of England are to open an account, to be entitled, the Account of the Treasurer of his Majesty's Navy.

When the money has got to the Bank safely, in this manner, for public purposes, it is a most material part of the history of this office (and one which is in evidence before your lordships) that, antecedently to the passing this law (with such exceptions as might be made for the purpose of small payments), an account had always been opened at the Bank by the treasurer for the time being, and payments had always been made there. This existing official regulation was adopted by the legislature, and enacted in the statute under consideration. By this measure an important object was attained, as the *personal* account of the treasurer was thus converted into an *official* account, so that the treasurer of the navy, who was formerly no more than a personal accountant, standing in the situation of a banker with whom money was deposited, and therefore considered to be by law entitled to the use of the money while it remained with him; was now to place it in the Bank in his official character. But still, according to the opinion given by an eminent person, whose voice has often filled this hall, Mr. Burke, it was not sent to the Bank, there to *fructify* for the Bank, but it was sent thither as a matter of official regulation.

Mr. Burke said, of a statute similar to that now under discussion, "that nothing was farther from his intention, than that the money should be carried to the Bank, there to remain without fructifying; that, if it was to fructify, he never intended that the Bank, or any other body or description of men, should benefit by it, but that the public should reap the fruits; for in his opinion, if the public did not reap them, there was no person so fit to reap them as the persons at the head of the offices, for which the money had been originally issued." These words of Mr. Burke afford an additional proof of the sense of the legislature at that time—they were pronounced on a similar occasion, and at a most important date. That eminent person had, in consequence of the resolutions in 1782, moved in that year for a bill for the better payment of the army; that bill which passed the legislature in 1782 was found when it passed not to be consistent with official regulation, and he was forced to bring in an amending bill; which he did in February, 1783, and upon that occasion he used the memorable words which I have just quoted. It is clear, then, that he who was promoting an act for regulating the office of paymaster of the army, was of opinion, that the money was not meant to be placed in the Bank, there to



*fructify* for the benefit of the Bank. It is clear that there is the closest analogy between the act he promoted, and that now in question. It is equally clear, that there was no principle in his mind, nor any in the mind of the public, at that time, that rendered it an illegal, far less an immoral act, for the money to fructify for the benefit of the person who held the office. I am entitled, therefore, to say, that the resolutions of 1782, had not the same meaning put upon them by the eminent person to whom I am alluding, by the legislature which, at his instance, passed the statute for the army, or by the public at large, as that which is now contended for by the prosecutors.

Your lordships will not suppose that in maintaining this argument, I mean to admit for one single moment, that one single fraction of the money which came to lord Melville's hands has *fructified* for the benefit of the noble defendant; I am arguing the act upon the abstract case (as I have stated already), the circumstances of the case shall be afterwards detailed to your lordships.

Having thus shown your lordships the sense in which the question was considered as to profit, in order to establish what was meant by the legislature, viz., that the object was not to prevent gain to the individual, and to transfer that profit to the Bank, but that it was to render the *personal* account *official*—that it was to prevent an ex-treasurer from continuing to act in those services which had commenced while he was in office, and which, by former practice, continued with him and his executors, until the services commenced by him were ended, creating large accounts by persons out of office;—I now recur to the statute again, and having discussed the first section, I beg your attention to the third.

I pass over the second section which relates mostly to Exchequer fees. Those of your lordships who are accustomed to the courts below, will not be surprised that I anxiously call your lordships' attention to the particular position of this clause in the act; but first, let us see what the clause says, it runs thus,—“And be it farther enacted, that from and after the first day of July, 1785, no money for the service of the navy shall be issued from his majesty's Exchequer, to the treasurer of the Navy, or shall be placed, or directed to be placed in his hands or possession; but the same shall be issued and directed to be paid to the Governor and Company of the Bank of England, to be placed to the accounts above mentioned.”

Now, your lordships will observe, that here are negative words; that those negative words are applicable to the Exchequer, and that they tie down the issue to be to the Bank of England; but you will observe that this relates to the *transit* outwards. Now, as to the position of the clause in the act, your lordships will observe, that the act has not, as far as I have yet gone, begun to treat of the money after it

has got to the Bank; it has not yet begun to direct what is to become of the money after it has got to the Bank; it is merely directing how that safe channel of communication, that duct (if I may be allowed the expression) which is to lead the money from the Exchequer to the Bank, is to pass it securely to this newly-established official account. This is not only the import of this clause of the act in the place in which it stands, but it is the conclusion to be derived from the express words of the act itself. For after negating the power of the Exchequer to issue to the treasurer, and having in the preceding clause imposed a power to issue to the Bank; it goes on to state,—“But the same shall be issued and directed to be paid to the Governor and Company of the Bank of England, and to be placed to the accounts above mentioned;” that is to the account opened by the treasurer of the navy—that is to the account referred to in the preceding page. Your lordships will observe, that the terms used are clear; and as to their position, a great and learned person (lord Kenyon) often made use of the phrase, in construing statutes and deeds, “*noscitur a sociis*,” meaning, that in construing an act of parliament, or any other written instrument, its meaning is to be discovered by the company it keeps, the place in which it stands. This clause, then, is placed in that part of the act which relates to the *transit* from the Exchequer to the Bank, and must be construed with reference to that part of the regulation, and not with reference to its passage out of the Bank. But the words used are so clear and so distinct, the expressions are so manifestly free from doubt, that if it had stood the last, instead of the third section in the act, it must have received precisely the same construction.

My lords, I hope I shall not be supposed to be too minute in this discussion; this matter cannot be rendered too clear; for, as I conceive, persons in high authority have doubted about it. Even persons learned in the law have (in the character of commissioners of naval inquiry) given a construction to this act, which, I will venture to say, it would not have received in the courts of Westminster-hall.

My lords, we come now to the second branch of the act of parliament, the branch of the act which relates to the situation of the money in the Bank, after it has got there in safety—after it is put to the official account. This account was first opened in the name of the treasurer of the navy, in July, 1785, and afterwards in 1786, under the title of the Act of Parliament New Account.

My lords, in all the transactions of life, in all regulations that are necessary for the conduct of human affairs, trust and confidence in those who are to conduct them must be supposed to exist. In framing an act of parliament, or any regulation of public or private utility, this principle of trust in the person



who is to execute must prevail. When the money is to be sent from the Exchequer to the Bank, under all the guards and fences of the ancient and the improved constitution of the office, it is not sent to lie there idle, but it must be brought from thence to supply the service for which it is destined.

Your lordships have seen by what duct or canal it has been taken from the Exchequer; what fences are established to limit its amount; what means and words are used, in order to secure its safe passage outwards.—It is the act of the different boards to state in a letter the sum of money required. The treasurer is then to memorialize the Exchequer, for that sum to be paid to the Bank. The Treasury is next to direct the Exchequer to pay it to the Bank. The officers or persons who administer to the issue of the money, are to take care that it shall go to the Bank; but when you come to that part of the act which relates to the drawing it out, there is no special distinct restriction on those who are to administer its payment, for the services for which it is destined. In this stage you put trust in the person whose office it is to pay. Trust is become requisite, otherwise the business must stand still. Accordingly, your lordships will see in what manner that part of the act is framed, being calculated to confer that trust, which the nature of the business rendered essential.

It is enacted that the “treasurer of his majesty’s navy, for the time being, by himself, or by the person or persons in his office, *duly authorized* by the said treasurer.”—Now, your lordships will recollect what the course of office has in all times been, and that the paymaster has been regularly the person *duly authorized*; that the treasurer has uniformly, as soon as he has appointed him, given him the necessary powers; and that upon this principle lord Melville in his first and in his second treasurership conferred that power on Mr. Douglas in the first instance, and on Mr. Trotter in the second.—The treasurer then, or the person authorized, “shall draw upon the Governor and Company of the Bank of England, for all navy services whatever, and shall specify in each, and every draft, the head of service for which the same is drawn; without which, it shall not be a voucher, unless it specifies the head of service for which it is drawn, and has been actually paid by the said Governor and Company of the Bank of England.”

Now, my lords, observe how this part of the regulation is managed. The treasurer of the navy is to draw; his appointee, his paymaster, under the authority given to him, is to draw;—what does it say? “That he shall draw;” who is to draw? The treasurer of the navy, or the person duly authorized. In what terms is he to draw? Under the head of specified service.

From whence is he to derive the specified service? According to the ancient usage of

the office, he is to get it from the different departments of which your lordships have heard so much, Navy, Pay, and Victualling. But is there a single word said, that when he draws that money out of the Bank, the money is not to be taken to a different place? Is there one single word from which it can be implied that it is to go to the chest of the sub-accountant in the navy branch? Is there one word said that it is to go to the chest of the sub-accountant in the victualling branch? Is there one word said, that it is to go to the chest of the sub-accountant in the pay branch? No, not one word; but this responsible officer, known in the course of office, existing as long as the office has been known to exist, appointed with full power by the treasurer of the navy, is to draw it out. For what purpose? In order that the payment may, according to sound discretion, pass to the sub-accountants in such manner as their services may require.

I submit to your lordships, therefore, that in this part of the act, there is not the same guard and fence as in the former part; no; there is nothing like it, but, on the contrary, there is given a special and distinct power to draw, without naming any particular place to which the money so drawn is to be carried. This power is given to the treasurer, and to the person whom he shall appoint, without restriction as to the place of custody. The act then goes on with a negative clause in the fifth section: “provided always, that the monies to be issued unto the governor and company of the Bank of England, on account of the treasurer of his majesty’s navy, shall *not* be paid out of the Bank, unless for navy services, and in pursuance of drafts to be drawn on the Governor and Company of the Bank of England, and signed by the treasurer of his majesty’s navy, or the person authorized as aforesaid, in which draft shall be specified the heads of service to which the sums therein mentioned are to be applied.” Now your lordships will observe, that here, there is a clause saying, that it is *not* to be paid, except to those heads of service. How are they to know those heads of service? Is there any part in this act that points them out, as there is in the act which has lately passed, respecting the treasurer of the Ordnance? Is there any part of this act which points out, that, when money is drawn from the Bank, it is to be carried to a particular place? No;—but what the act points out is, that it is to be drawn for a particular service, and that it is to be paid to a particular service. But with regard to the intermediate situation of the money—whether it is to be in the chest of the paymaster—whether it is to be in the chest of the sub-accountant—whether it is to be in the chest of a banker, of the one or of the other; or whether it is to be at another account in the Bank (according to the doctrine of *write-off*, given in evidence by Mr. Tierney) is not stated in the statute. My lords, that



is left entirely to the discretion of the office, and it is so left for the wisest and the best purposes; because it would be utterly impossible to carry on the duties of this office, according to the nature of those duties, either with regard to the large payments, or with regard to the minute payments, without leaving it in that state, and subject to that discretion.

The nature of the payments your lordships have heard. They descend to the minuteness of a shilling, there are many under twenty shillings, there are very many of them under five pounds. There is an absolute necessity for all such payments being in money; and there are, besides that, various large payments, for which the demands are made in bills. Those bills are assigned and payable at any time when the payees shall present them. It is necessary that the money should be ready to answer all those demands, of whatever amount, small or great. It must be ready and secure, but it need not be ready or secure in any particular place. As to that, the law has said nothing, but has left it to the discretion of the officer, who may direct to what coffer it shall go. But whether it goes to the coffer of the paymaster, or the coffers of the sub-accountants, or whether it goes to the account of the paymaster in the house of Coutts (a house whose credit is above all possibility of doubt) or to the account of sub-accountants in the Bank, is precisely the same thing. It is not its being under the slates of the Bank in Threadneedle-street, or under the roof of Mr. Coutts in the Strand, that makes any difference with regard to the deposit. When the money is once placed to the account of a person, other than the treasurer, and that person obtains a command over it, the deposit is changed; and although, therefore, the regulation of *write-off* may be a regulation that may answer some purposes of convenience, it does not seem at all to take away the risk, or answer any purpose of safety, which is the ground of all this extraordinary complaint. I trust, therefore, that it will appear to your lordships, that the risk to which the public money is exposed, arises precisely in the same way, by transfer to the account of a sub-accountant, with this difference only, that it is at risk in the hands of the subordinates instead of the principal.

My lords, what is the nature of the navy office? There is a treasurer at the head of it, always a person of consideration in the state, who has that office bestowed upon him in order that he may be enabled, not to discharge any particular minute duties with regard to that office, but that he may be responsible generally. He holds the office either as a reward for former services, or that he may be enabled to discharge other duties. There is a paymaster, the next in order to the treasurer, a person of considerable respect; like Mr. Douglas, related to an ancient family, or well known, and well connected, like Mr.

Trotter. After the paymaster, come very respectable persons in their several departments, the different sub-accountants; but will any body say, that in the eye of the law, or in the eye of reason, there is more ground for placing confidence in those sub-accountants than in the paymaster of the navy? When the constant course has been that the paymaster drew before the passing of the act, and is to draw since the passing of the act, can it be said that it would have been a wise thing, that it would have been safer or better to have put the money, immediately, into the hands of those sub-accountants? Would it not have been said, on the contrary, if the treasurer had made an order to trust them with the money, if there had been any loss from the failure of any one of those sub-accountants (and such loss did arise from the failure of one of them, who made an intermediate use of the money), that the treasurer was deeply and seriously responsible? It certainly would, and for this plain reason, because in doing so, he had deserted the usual course of his office. Whereas he would have been justified in trusting his paymaster, as he followed the ancient and accustomed course of the office. I am sure if this matter had been the subject of previous consideration, it would not have been said, *a priori*, it shall be paid to Mr. Swaffield, or to any other sub-accountant, and not to Mr. Trotter, the paymaster regularly named, the man recommended by Mr. Pitt, related to Mr. Coutts, and allied to, and patronised by many considerable families. Could it have been said, you shall not trust him, but shall trust a person in comparatively an inferior situation? My lords, I have a right to say, the act is to be construed upon this ground; we are not to construe acts of parliament by events that happen afterwards, they are to be construed by the words—by that which they clearly mean, and not by any unfortunate length to which Mr. Trotter may have been tempted to go, by which he has brought about that which is now the subject of your lordships' investigation, but which I trust, in the end, will be the subject of your lordships' judgment of acquittal. I humbly submit to your lordships, therefore, that this is the clear meaning of the law, and that it is impossible to call in aid the 11th section, in order to disturb this meaning which I give to the law.

In the first place your lordships will observe that the 11th section relates to a perfectly different subject; that every other part of the act relates to payments in London, and supposes persons to come to London to receive their payments, but that that part of the act relates to payments at the out-ports. The particular mode by which those payments are made, puts the parties there in a different degree of responsibility from that in which they are in London. The sub-accountants in London need never have any money in their hand still the actual moment of payment comes;



it may remain in the treasurer's hands, or the paymaster's ready to be handed over to them. The convenience of the service permits this, and therefore, in the other part of the act, which relates to the accounting, your lordships will see, by applying your minds to that part of the act, that they are regulated according to the nature of their duties. But how is it with regard to payments at the out-ports? The sub-accountants there must be trusted with money to a certain amount; they must have a certain given sum, and when the treasurer is to go out, and to account upon going out, he is entitled to take credit not only for *what they pay in London*, but he is entitled to take credit for *what is in their hands in the out-ports*. It was necessary, therefore, that there should be a particular clause relative to the out-ports to render this clear. This is that clause. Is it competent then, upon any principle of sound construction, by which an act of parliament is to be expounded, to say, that a clause, meant for a perfectly different object, which lays down no general regulations, which establishes no system or mode of action generally, is to be considered as a guide for construing another part of the act, where such a rule is laid down? You cannot on sound principles, apply a clause, in an act which has no reference to the general matter, in order to construe the meaning of the general matter, where there has been the utmost caution used to regulate the general matter, and to make it clear and distinct. This being the case, my lords, it seems to me that there remains but one single point more to trouble your lordships with upon the statute; and that is, that it may be said then *cui bono*, where is the benefit of this statute, if it is not to keep the money in the Bank.

Before I state my argument on this head, I would wish to call your lordships attention to the act to which I referred respecting the Ordnance, by which your lordships will see that the regulations there made, are of a nature which shows that the legislature thought that regulations similar to those in question were not sufficient, and did not warrant the construction that is put upon them by the managers. It is there enacted, "That the treasurer of the ordnance for the time being, by himself or his deputy, shall, from and after the passing of this act, make payment on all imprests and debentures ordered for payment by the board of ordnance (except such as shall be issued for the pay and allowances to the officers and persons employed in the service of the board of ordnance, subject to any deductions for duties or otherwise) by drafts on the Bank of England, according to a form of draft hereafter to be agreed upon between the lords commissioners of the Treasury and the Governor and Directors of the Bank of England; and stating therein whether the same are for the payment of imprests or debentures, or both, as the case may be; provided always that the said treasurer or his deputy

shall not have power and authority to draw on the said Bank of England for the payment of the total amount of the imprests and debentures which shall at any time be ordered for payment by the board of ordnance but for the amount of such imprests and debentures only as shall be actually presented for payment to the said treasurer." And then it provides in the next clause, "that it shall and may be lawful for the said board of ordnance from time to time to authorize and empower the said treasurer, or his deputy, to draw on the Bank of England for such sums as the said board shall deem proper for the payment of salaries and allowances subject to deductions for duties or otherwise, as aforesaid, to the officers of the said board, and persons employed under their direction or authority, and for such sums as shall be necessary for payments on his petty account; and the said treasurer, or his deputy, is hereby directed to draw distinct and separate drafts for each of the said services, and to keep a separate account thereof, and to state to the board of ordnance in his applications for leave." So that by this act, applicable to a similar subject, the legislature has required these particular regulations as to payments made from the Bank, otherwise such restrictions upon those payments could not have been inferred.

My lords, I now proceed to state to your lordships what occurs respecting the benefit derived to the public from the act regulating the office of treasurer of the navy. It is said by the honourable managers, that there is no benefit and advantage to be derived from it, but on their construction of the law. My answer to this in the first instance is, that the law, according to their construction, would lay an embargo upon the mode of executing the payment of the money, in an office constituted like the office of treasurer of the navy. The nature of it is this: that the sub-accountants are to be the persons who are ultimately to hand the money to the payees. Now, either those sub-accountants are to have the money in the first instance, or they are not. If they are to have the money in the first instance, there should be a clause in the act of parliament varying the course of office and requiring it to be paid to them; but there is no such clause, therefore the treasurer is to keep the custody of the money in such situation as he thinks fit; and there is no imperative order to keep it in the Bank. If the sub-accountants are not to have the custody of the money, then I submit it is in its proper custody by being in the custody of the paymaster, because he is the regular appointee, and because it is done for the purpose of giving facility to payments. The multitude of small payments that come to the office, require that the sub-treasurers should be provided with money from time to time; and they require at the same time, that this should be done by actual money. Then



it becomes absolutely necessary, that in order to have this actual money, the money should be out of the Bank; and the money being to be out of the Bank, the question is precisely this: Where is the money to be? For in the nature of things it is impossible that the safety of Bank custody should be attached to it. It must be money, to which no individual can have access, in order to effect that security; but, to make it useful, to enable the payments for the service to be made, some individual must have access to it; and then it comes to this precise question, Whether you will give that access to the paymaster, whom the constitution of the office considers as fit to have access to the money, or to subordinates who are not so fit to have access to it. I therefore submit to your lordships, that the write-offs are only another mode of putting the money into the power of the sub-accountants. But by putting it within their power, there is no longer any safety derived from its remaining at the Bank; because, by the transaction of *writing it off*, it has become the money of the individual, and no longer the money of the office. Except therefore that the stability of the Bank of England may be supposed greater than the stability of a banking-house, there is no reason for keeping it there; and nobody will dispute that the stability of the banking-house where Mr. Trotter placed it, is equal to that of the Bank of England itself.

I was about to state to your lordships next, the uses which have arisen from this act, and to state that they are, in my opinion, of the most important nature, notwithstanding they do not embrace the object contended for by the managers. Your lordships have heard that the widow and the orphan of the sailor have been the subjects of the protection of the noble lord. Your lordships have heard that he has taken infinite pains to make regulations which should check the worst of all crimes, the crime of falsifying instruments to the injury of the poor. My lords without the regulations which this act contains, it would not have been possible for those measures of the noble lord to have been carried into execution with effect, for if you had cramped and fettered the payments in such a way as to require each particular sixpence to be doled out at the Bank to the individual, all those meritorious acts of Parliament would have been ineffectual. The allotment of a seaman's wages to his wife. The payment of a child after the death of his father in the battles of his country. The payment to any individual who may have a claim upon the treasurer of the navy of a small amount, would have been of but little benefit indeed, if they had been obliged to take their piece of paper from the office at Somerset-house, for the sum of one shilling, or five shillings, or twenty shillings, or even up to five pounds, and then have to carry it through all the offices of the Bank of England before they ar-

rived at the place of payment. My lords, our construction secured, therefore, the money to be had in such a way as to enable those payments to be made on the spot, and in a place where it should be convenient for such persons to receive it; where they were known and sure to be attended to. But this was not the only object of the act of parliament. It was not only necessary to leave the money passing out from the Bank free and at the control and discretion of the paymaster in that respect, but this act had other objects, and those most material to the welfare of the country, and which it has carried most completely into effect. It had for its object, to prevent premature calls by the treasurer on the Treasury, by warranting no payment unless a letter from one of the boards certified the existence of the call, and accompanied the memorial of the treasurer to the Treasury. It was passed for the purpose of ascertaining balances while the services were performing. It was to secure to the public an official account instead of a personal account. It was through that medium to confine the account of the treasurer of the navy to one account, instead of being distributed into five or six, according to the number of ex-treasurers who have open accounts. It was to prevent the office of ex-treasurer from continuing an existing office. It was to make a treasurer, when he went out of office, hand over all the money (as the noble lord did every penny of it) to his successor, in order that the accounts might be all carried on by one set of clerks, under one master, in one set of books, and not according to the irregularity that was practised before that time, to have as many books open as there were ex-treasurer's accounts outstanding. It was to secure a yearly audit of the account, by calling upon the treasurer to make up his accounts each year, and have them audited at the end of the year, instead (to the disgrace of this country and the administration of the Exchequer) of having accounts in the Exchequer, as was the case with those of lord Ranelagh, in the year 1782, a treasurer who went out of his treasurership in the reign of king William. These are the benefits of the act, and they were perfectly consistent with the objects the noble lord had in view, when he brought it in, for the purposes described in the third report of the commissioners of accounts, which exhibits this as the foundation of the regulations.

My lords, I have now concluded my observations on the statute, which I fear have extended to a greater length than may have been agreeable to your lordships, but in a matter of such magnitude and importance, it is highly necessary that the sound construction of the law should be understood; for upon that, according to my conception of this cause, the question turns.

The impression which the facts have made upon my mind, from long and attentive investigation of them; an impression com-



pletely confirmed by the powerful and able manner in which they have been stated to your lordships by my learned friend, lead me to the conclusion, that every part of the facts, and every motive and intention of the noble defendant will be made too clear to make it possible to rest a doubt upon them; and I trust that your lordships will agree with me in the conclusion which I come to, that you must acquit the noble defendant both upon the fact and upon the law.

My lords, I would wish to take this part of the case in the order of date as much as possible; but it is impossible for me to approach it, without first considering the manner in which this case has been treated by the honourable and learned manager who summed up the evidence for the prosecution. My lords, I know the talents, and I know the experience of that learned person, and I cannot help thinking that he has applied all the ingenuity of his most fertile mind, in order to give your lordships a wrong impression of this case; and, give me leave to say, an impression, as I conceive, totally inconsistent with those genuine principles of administrative criminal justice, which I am sure will prevail this in high tribunal, as it does in every inferior tribunal of the kingdom.

After the opening speech, the witnesses were brought, and the evidence was laid before your lordships; and it seems to me a most remarkable feature in this case, that the solicitor-general, in addressing you for the purpose of observing upon that evidence, by the tenor and plan of his address, endeavoured to satisfy your lordships that you were to draw presumptions contrary to the evidence adduced by himself and the other managers. Or, in other words, that a great criminal prosecutor in the highest court of criminal justice in the country, instead of resting upon the facts proved, and giving credit to the witnesses who have been brought to prove those facts, attempts to evade the facts as they are proved by the prosecutor, and to state presumptions not only distinct from the facts proved, but contrary to them, and at variance with them.

My lords; I shall have occasion to explain this principle as I go along, and to satisfy your lordships, I trust, that it is not according to any course of proceeding, and is inconsistent with general justice, that when your lordships have clear and distinct evidence, given to you upon oath, sanctioned by the credit which is given to the witnesses by those who call them, that they should destroy the effect of that testimony by having recourse to presumptive evidence to refute the proof.

To enforce by presumption and inference, the evidence given, I understand; but to refute it is against all rule; and I trust the case between us will appear to be this, that we shall confirm the testimony of their witnesses by presumptive evidence, which will

render the case conclusive for the defendant, whilst they cannot undermine the evidence of their own witnesses by contradictory presumptions. But even if they could do so, consistently with the principles of justice, still I contend that their inferences do not warrant their conclusions.

In the proceedings against the bishop of Rochester, my lord Cowper said, "The wisdom and goodness of our law appear in nothing more remarkably, than in the perspicuity, certainty, and clearness of the evidence it requires to fix a crime upon any man, whereby his life, his liberty, or his property may be concerned: herein we glory and pride ourselves, and are justly the envy of all our neighbour nations. Our law, in such cases, requires evidence so clear and convincing, that every by-stander, the instant he hears it, must be fully satisfied of the truth of it; it admits of no surmises, innuendos, forced consequences, or harsh constructions, nor any thing else to be offered as evidence, but what is real and substantial, according to the rules of natural justice and equity."\*

My lords, I am sure this doctrine will be applied by your lordships in your consideration of this case, and that you will not permit any strained constructions to break in upon the clear meaning and intendment of the evidence. I have already stated that the noble defendant has not one shilling of the public money in his possession:—that he has paid over every sixpence that he has ever received:—that he never delayed any service:—that the public have never suffered by him, either as to the activity of the service or the security of the money: and it must always be remembered that the object of this prosecution is to make out that the noble lord has, against conscience and against law, availed himself of the public money in his hands, or in the hands of his deputy, for the purpose of making gain to himself.

My lords, I believe I state the question between the honourable managers and the noble defendant distinctly and fairly, when I say, that he is not here to be tried for any petty delinquency—that he is not impeached for an accidental mistake—that he is not here to be caught by any incautious conduct, at any particular time,—but that he is here upon his trial, on the prosecution of all the Commons of England, as a statesman, having held a high office, in which he has misdeigned himself, by having systematically, illegally, and corruptly made use of the money of the state for his own private lucre and gain. Whether avariciously, for the purpose of hoarding it, whether for the purpose of spending it ostentatiously, or whether for the purpose of maintaining or promoting his ambitious views, is not the consideration.

The question in this case, my lords, as in all crimes, is the motive of the heart—"Actor



*non est reus nisi mens sit rea.*" The man is not guilty if his heart is not guilty, and it is for the prosecutors to establish the corrupt mind. Whereas, if I show the noble lord, on the other hand, to have displayed uniformly, not only at the recent period as to which your lordships have had evidence to-day, by which he appears at once to have rejected 34,000*l.* of public money, which he might have retained; but that in his early days, when he was toiling in a laborious profession, and ascending, by degrees, from the labour of that profession to the great heights to which he rose in political life—if I can show you, I say, that he uniformly disregarded money, as has indeed been distinctly admitted by the honourable manager who opened this case—if he has been not only untainted with avarice, but distinguished for liberality—if such has been invariably the character of the noble lord, it will require very strong proof indeed, to unsettle the presumptions of innocence to be drawn from such a character. It is not by searching in the garret of the window of the dead paymaster, Mr. Douglas, or by bringing old Bank-notes from the dead Bank-note office of the Bank of England, that such presumptions are to be defeated. It is not by detailing particular stock transactions. It is not by the accidental overdrawing of accounts, where the parties never charged interest against each other, and where it was an open account from its beginning in 1786, to its close in the year 1800, that such a presumption in favour of innocence is to be repelled. It is not by such evidence, against such clear distinct admitted habits of liberality in all money transactions, that the noble lord is to be convicted of corruptly and systematically attempting to pilfer from the public those miserable sums of money with which he is charged, to the evidence of which I have thus generally referred, and which I now proceed to examine in detail.

And first as to that part of the case which relates to Mr. Douglas's paymastership, which consisted of all the first treasurership of the noble lord, and the first part of his last treasurership. That case, according to the manner in which it has been laid before your lordships, goes to three points: it relates to the question upon 10,000*l.*; I mean the first 10,000*l.* The question with respect to the two Bank-notes of 1,000*l.* each relates to it, and it respects the money which went from Mure and Atkinson's to Payne's, and from Payne's to the Bank. I will take it in that order, only wishing to observe, that when I am taking under consideration the 10,000*l.* in the first instance, I mean likewise to consider the 10,000*l.* which is in proof before your lordships, as having been taken somewhere about the year 1792, and which is part of that money which stood at the Chest account. I do this, my lords, because the argument is the same upon both, and because it would be coming back again to the argument which I

shall be under the necessity of addressing to your lordships now, if I were to defer it to its proper chronological stage in the cause.

With regard to the first 10,000*l.* the charge is made in two ways. It is first taken by itself, and it is alleged, that he is criminal with respect to this 10,000*l.* because, being a public accountant, he did contumaciously declare in the House of Commons, that he would not tell what he had done with it; and next, it is charged that he took the money to use it for himself.

With regard to the first of these charges, I have already stated that it is in proof before your lordships, that the 10,000*l.* is not in the noble lord's pocket: he is not a defaulter for that 10,000*l.* The noble lord, long before the time when he made the declaration which is supposed in itself to constitute a distinct crime, had paid that money to the public. If I understand the nature of this allegation, it is, that a public accountant refusing to declare to the House of Commons, how he has used any part of the public money, is guilty of a misdemeanor. But this does not apply to the noble lord: he was not a public accountant at the time he refused to make the disclosure; he had paid over all his money; and, with regard to the question, how this money was employed in the intermediate time, that belongs to the other branch of the charge; namely, the inference that he made money by it for his own private advantage. Not being able to understand this part of the charge of contumacy farther than I have stated, or what is the nature of the crime of taking the 10,000*l.* and having refused to disclose the intermediate use of it, I here leave it.

With regard to the other branch of this charge, I shall take the liberty of making a few observations in addition to those which have been made by my learned friend, Mr. Plumer.

Your lordships have heard much of the Chest account, and have heard that there were placed to this Chest account certain sums of money given to the noble lord by what have been called requisitions. Those requisitions were answered immediately, without Mr. Trotter making any inquiry as to the application of the money. The first 10,000*l.* constituted a part of that account; so did the second sum of 10,000*l.* taken in 1792; and the sum of 40,000*l.* taken in 1796. The two lastmentioned sums are understood to have been applied to public purposes. Lord Melville, in what has been called his confession, says, the first 10,000*l.* was likewise applied to public purposes; and with this evidence your lordships are called to make an inference contrary to the uniform tenour of the noble lord's life—contrary to his character and conduct—You are called upon to conclude that it was applied to purposes of private emolument instead of public purposes.

Your lordships will recollect, that, in order



to aid the evidence in this respect, recourse has been had to the noble lord's declarations before the commissioners of naval inquiry; and it has been stated by the solicitor-general, that the noble lord very boldly avowed, in the face of the House of Commons (in a manner the honourable manager censured severely), that he had taken the money; but, when before the commissioners of naval inquiry, the noble lord had sheltered himself under the act of parliament. Now, I wish your lordships to examine the particulars of that evidence, and, in this stage of the cause, to correct the misrepresentation which has been made by the honourable and learned manager, respecting the character and conduct of the noble lord, on those two different occasions.

The noble lord was placed in a very singular situation, when he was examined by the commissioners. The sum of forty thousand pounds, received in 1796, the sum of ten thousand pounds, received in 1792, and the sum of ten thousand pounds, received in Mr. Douglas's time, were all taken for public services. But the service to which the 40,000*l.* had been applied, had not then been disclosed. The noble lord was of opinion, that their uses ought not to be disclosed, and that it was as injurious to the public service to disclose the application of the 40,000*l.* as any of the sums the use of which has not yet been disclosed.—My lords, there was another circumstance which the noble lord had learned; but he had learned it at a period very long subsequent to the time when the thing had been originally done. He had learnt that Mr. Trotter had kept the public money at Mr. Coutts's in a mixed account. But he was not told it until after he had received his first letter to attend the commissioners of naval inquiry in 1804. Mr. Trotter having acted, in some respects, as lord Melville's man of business, from whom lord Melville received money, and to whom his lordship's salary and other monies were paid, his lordship learned that, for a great number of years, the private monies of Trotter, the private monies of the noble lord himself, and the public monies of the country, were all mixed and put together, in one account, in the name of Mr. Trotter. Owing to this circumstance, communicated at the time, and in the manner which I have just stated, the noble defendant found himself in a predicament which rendered it impossible for him to come forward with a positive declaration that he had received no benefit from the public money. Because, having learned for the first time, that he had received his payments out of the mixed account, he might have been paid when the balance was against him, and so receive benefit without being conscious of it. So that, when asked whether he authorized Mr. Trotter to apply the public money to his use, the noble lord gave a distinct answer, by stating, that he never had given any such au-

thority. But when he was asked, whether he had received any profit from the public money, he declined answering the question, protecting himself under the clause in the act; and why should he not take advantage of the clause of the act of parliament, without any implication of guilt arising from his doing so? Having been informed, for the first time, after a practice had prevailed for ten years, of using this mixed account for the purpose of making all payments for the noble lord, for the purpose of receiving all money for the noble lord, for the purpose of receiving all private, as well as public money; when he at last knew that he had been served out of that account—could he, could any person that had any regard for character, with the knowledge of such a fact, just communicated, have done otherwise?

Thus circumstanced, it had become impossible for him, not from any act of his own, but from the concealed act of another person, to be able to say with certainty, that, in the course of the payments which had been made to him, he had not, unconscious of it, received some benefit. Certainly he could not declare that he had received none, and it could not be expected that he should admit having received any, when he was ignorant of the cause by which it might have been received.

I trust, therefore, that your lordships must feel satisfied, that the noble lord, thus cruelly situated (from no fault of his, but owing to the delinquency of Mr. Trotter), exercised a sound and honourable discretion, and that it would not have been sound, or honourable, for the noble lord, whatever the conscious innocence of his own mind might have been, with regard to the perception of profit, to have rashly ventured upon the oath which was tendered to him, when a clause in the act afforded protection of which the noble lord might honourably, and conscientiously avail himself.

Such is the character of the noble lord's *confession*, such the character of his concealment. A conscientious feeling, and a sense of public duty, in the two different instances that I have stated, led him to decline answering, and that led to his misfortune. But his declining to answer would not have led to the misfortune of lord Melville, if the fear of personal responsibility, civil and criminal, had not led to concealment on the part of Mr. Trotter. If that gentleman had not been apprehensive of being charged criminally; if he had not been alarmed for the effects of a civil suit, the Commons of Great Britain, and the public at large, would, at an early period, have seen this matter in a very different light. But it has been reserved for your lordships, after this cruel state of intermediate suffering by the noble defendant, to have the whole of that secret, which was locked up in Mr. Trotter's breast, disclosed in your presence, and with it the motives of the noble lord unfolded and explained; by which the purity of his intentions, the uncorruptness of his mind,



his disregard of money, will be evinced and established.

My lords, the use of the 40,000*l.* placed at the Chest-account in 1796, was disclosed in the year 1805, and a bill of indemnity passed on the subject. Now, it requires no great stretch of imagination to suppose, that this disclosure might have been made in the year 1796, or 1797. I will suppose that that disclosure had then been made. I ask your lordships what must have been the answer of that great and eminent statesman, Mr. Pitt (whose eulogium has been pronounced, and whose purity has been vouched for by the honourable manager, who opened this charge), if he (Mr. Pitt) had been called upon for a declaration as to the application of the 40,000*l.* at the period to which I have alluded. Must not that honourable and exalted statesman have demurred? must not he have said to the House of Commons, you have trusted and confided in me for more than twelve long years: you have been accustomed to believe that I have administered the affairs of the country with integrity. You have been accustomed to think that I am fit to be intrusted with secret service money to an immense amount. I took from the coffer of the state, that which I have again restored to its proper place. I am not a corrupt man. I made no improper use of it. I have restored it entire; and, in the mean time, it has done an extraordinary public service. The fulness of time may or may not come, when I shall have it in my power to disclose that service. If it does come, I will present a clean bosom to you. If it does not come, I must still ask for that trust and confidence which you have always reposed in me. Would not such a representation have been satisfactory to the House of Commons? Would that answer have been considered as ground for an impeachment? Would that mode of treating the application of the 40,000*l.* in 1796, have made the country say that Mr. Pitt was to be put upon his trial for corruption? My lords, how was it in the year 1796? The declaration of the fact, with regard to the application of that 40,000*l.* would have been the ruin of the country, and the destruction of individuals concerned in the transaction. The coffers of the country would have been exposed in their barrenness, in the midst of a difficult, disastrous, and ruinous war; and the individuals to whom the 40,000*l.* was advanced, would have been thrown by repayment into the jaws of bankruptcy. The time came when the circumstances of the country altered, when the individuals to whom the money was advanced had actually failed,—Messieurs Boyd and Benfield, to whom the money had been lent to enable them to fulfil important public engagements,—and Mr. Pitt was of opinion that it might be disclosed with safety to the country, and could no longer be injurious to individuals. My lords, it is disclosed; it was an application of that sort which might be dis-

closed; but the application might have been of a different nature; it might have been such an application as the state required in 1792. There might have been midnight meetings, threatening the state. It might have been applied to obtain secrets to enable the ministers to secure the safety of the country, the ignorance of which might have involved it in ruin. My lords, in that case, the application could not have been disclosed.

My lords, the case which I state is not hypothetical; it is a case respecting the application of public money, where, if the question had been asked, and the disclosure refused, in 1796, there must have been, from the general conduct of the minister, a presumption of innocence. I ask, then, what is the difference of the case in question and that which I suppose? "*Mutato nomine de illo fabula narratur.*" Who was Mr. Pitt? The minister of the time, the friend of lord Melville, his bosom friend in private, his public friend politically. Attached to each other, following the same system in politics—thinking, as it were, with the same mind—pursuing the same objects—possessing alike the confidence of the country, sitting daily together in the House of Commons, in mutual and constant communication on public affairs, trusted alike by the representatives of the people, and by the king.

My lord Melville has applied 10,000*l.* at one time, and 10,000*l.* at another, for secret service, and has regularly restored the money to its proper place. This was not like the secret service money of the secretary of state, where the law makes the oath of that officer a voucher, and supposes it fitly applied. The money employed in this case being replaced, it required no voucher. To the public there has been no pecuniary loss or inconvenience, and the particular services which it was meant to promote, were performed in full time. Under these circumstances, your lordships are called on to refuse your confidence to lord Melville's declaration, and to find him guilty of a high crime and misdemeanor. Lord Melville, who was the private and the political friend of Mr. Pitt the minister in whom King, Lords and Commons confided. You are required to convict lord Melville, in a case in which Mr. Pitt would not even have been accused, and yet it is impossible to distinguish them but by their names, for their political acts and public principles were the same throughout; they equally participated in the application of the money. In another situation, I might question the wisdom of those acts, or the soundness of those principles. But they were wise in the opinion of the country, and of the legislature; they were applauded for eighteen years together. Shall it then be said, that the mere circumstance of a statesman having said in the House of Commons, that he would not disclose the application of secret service money, is to be considered as a crime in itself, and to be held



to afford an inference of corruption, not only in despite of the conclusions to be drawn respecting the analogy it bears to the 40,000*l.* but in despite of the life, character, and conduct of the noble defendant? My lords, I say that the presumption attempted by the managers, is violent, strained, and unnatural; whereas, the presumption I contend for, falls in with all the facts and circumstances of the case, with the collateral and analogous matter, and with the character of the accused.

So, my lords, it stands, even upon the dry question of inference; but, my lords, we are not here, according to lord Cowper, to *infer* criminality. We are not, in the language of lord Bacon, to decide by strains of wit or art. No, my lords, we are here assembled in the first criminal court in the country, to do justice according to the proof. Recollect, my lords, you are here in the trial of one of your peers, in a criminal case, and that in a criminal case the prosecutors cannot infer the use of money; on the contrary, they are bound to trace its use. If, then, they are bound to show that money has been made use of, are your lordships to infer guilt contrary to the presumptions arising from concomitant and acknowledged facts?

But it may be said, that here have been two Bank-notes traced, and these two notes have shown that the noble lord had an early dealing with the money belonging to the treasurer of the navy; and having that early dealing proves that he was prone to use the money of the office for gain. Now, my lords, let us see what inference is to be derived from this part of the case; because, I can assure your lordships that, if I understand this case at all, it is one in which I do not think it by any means the interest of the noble defendant to omit the discussion of any part of it. There is no part that we are anxious to keep from the light; we wish to discuss it, and, as my learned friend said in his address to your lordships, to sift it to the bran.

There were two Bank-notes which were received by Mr. Douglas at the Exchequer, under particular circumstances, so well known from the evidence, that I need not recite them, part of 50,000*l.* issued from the Exchequer, and part of 93,000*l.* issued from thence. Out of those sums, two Bank notes of 1,000*l.* each, part of those receipts, have been produced, the transaction having passed twenty-four years antecedently to the time at which your lordships are sitting, to try the criminality of that fact. These two notes were paid, one to Drummond's banking-house, the other to Moffatt's, and the proof is, that they were paid to lord Melville's account in both; and I do not mean to dispute that the 600*l.* which stands to his credit, under the word "received," came from one of those two Bank-notes, and that the 1,000*l.* Bank-note that went to Moffatt's to take up Newbigging's bill, likewise was one of those two Bank-notes.

The conclusion, which your lordships are called upon to draw in this part of the case is that because these Bank-notes are found at the respective bankers, one at the distance of seven days, and the other at the distance of fifteen days, from the time when Mr. Douglas took them from the Exchequer; and because they are the same Bank-notes that were received at the Exchequer; that, therefore, the noble lord having received those notes must have received them as the money of the navy, and not as his own money. Now, does it follow, that because the noble lord received a Bank-note which had been received at the Exchequer by the paymaster of the navy, which was afterwards paid to him, that that is navy money? Oh! my lords, we are in a cruel situation, in this case, in many respects. I have stated already, that the presumptions contended for in one part of the case, are directly contrary to the proof given on the part of the prosecutor: and here we have documentary evidence, without a single witness to the *res gesta*: and, then, we are told by the honourable and learned manager, who summed up this case, that we should have an opportunity of giving evidence to refute the facts which they established, when he knew, from the nature of the case, that it was impossible. He knew that Mr. Douglas was in his grave, that Mr. Trotter was their witness, and that all the other persons connected with lord Melville, and with his books and papers, constituted their testimony, and that we could not have any other evidence to give, than the very short evidence we have given. How, then, could your lordships have the case altered in point of evidence, when Mr. Atkinson is dead—Mr. Henry Drummond is dead—Mr. Douglas is dead? How can the production of mere documentary evidence, without the accompanying transactions, the *res gesta*, represented by living witnesses, be considered as proof of guilt? Suppose this a civil case, the case of a trustee, and that the trustee was a person immersed in a great deal of business, of a public or a private nature. Suppose his attention constantly called to affairs different from that of the payment of money; suppose him to have received money on account of the person to whom he was trustee, that he had had it paid at his bankers: suppose, that out of the money paid, there were some stray hundred pounds in a situation like those notes which had remained unexamined, to the distance of twenty-four years, when all the parties were dead, who could have accounted for the particular circumstances by which this money came there; would it be borne to come at a distance of twenty-four years, and by tracing a Bank-note from one place to another, and finding it paid to the account of this trustee, that, after the lapse of twenty-four years, when all the persons were dead, who could have explained the circumstances; when no account could be given of the transaction,



that the mere payment of the Bank-note should be considered to be a presumption of fraud and breach of trust? My lords, the safety of man is at an end, if that be the law of this country.

At the time when these transactions took place, the noble lord enjoyed the situation of lord advocate of Scotland, with a considerable salary, having extensive practice at the bar of Scotland. He was, at that time, keeper of the signet, treasurer of the navy, and had real property in Scotland, from which your lordships have seen, by the evidence, that remittances were made. In short, he had funds at that time to the amount of eight, nine, or ten thousand pounds a-year. Shall it be considered to be an inference of guilt, in such a case, that 600*l.* was placed to his credit, as part of a Bank-note, which issued from the Exchequer in a navy payment, in one instance, and 1,000*l.* in another? are those notes to be considered as navy money, when he had other abundant sources, from which such sums might have been derived? when the payment might have been made innocently in those very notes; this, too, at the distance of twenty-four years from the transaction, when all, who could have thrown light upon the matter, are long since dead. It is farther to be observed, that Mr. Douglas is proved to have managed lord Melville's private affairs, and to have received his private monies, and whether, when he paid those to his banker, he paid with one note or another, was a matter of indifference. Under such circumstances, it would be contrary to the humane regulations of the law of this country—contrary to probability, and to the rules which govern men in judging of human actions, to draw a conclusion of guilt from the mere circumstance of those Bank-notes being received in navy payments at the Exchequer.

My lords, I come now to the case of Mr. Atkinson, and with that I shall conclude this first branch of the cause. Your lordships have certainly a proof of navy money having been at Mr. Atkinson's, the Bank-notes having been traced to Payne and Smith's, and afterwards to the Bank, in payment to the treasurer's account. But I ask, does that amount to any thing more than this, that this sum of money was deposited in Mr. Atkinson's hand, and that it was paid from Mr. Atkinson, through the medium of Payne and Smith, back again to the treasurer's account at the Bank. Your lordships will recollect, that this was at a period of time before the act of the 25th of the king had passed, and that there was no regulation, at that time, with regard to the place of deposit. That the only matter for consideration (with a discussion of which I do not trouble your lordships, after what my friend has said) is that which relates to the alleged violation of the warrant. Where is there any evidence of any money having been made, any interest got, or any profit

acquired by the noble lord having made his deposit at Mure and Atkinson's? It appears from the evidence, that Mure and Atkinson were at that time persons in the highest credit, and the noble lord had a perfect right at that time to make his deposit where he pleased. I say he has that right now, after the sums are assigned; he has that right now, according to the course of office; but at that time there was no impediment to it, at any period from its issue to its application.

My lords, before I conclude what I consider to be the first æra of this prosecution, permit me to observe, that the periods of time at which those payments were made, were periods of the *ex-treasurership*. I mean the payments from Mr. Atkinson back to the Bank. It is unnecessary for me to stop to argue that Mr. Dundas, as *ex-treasurer*, was no longer under the obligations which were imposed on him when he was actually treasurer, yet there is not a *scintilla* of evidence to show that even at that time he ever made a single sixpence of the public money in his hands. This, therefore, affords an additional presumption that he is not guilty of the crime laid to his charge; on the contrary, your lordships know that he delivered over a balance of 56,000*l.* to the Bank, in 1783, at once—every thing except that 10,000*l.* which he has always declared was out on public service, but which he has since paid.

My lords, I come now, as I stated to your lordships, to the second æra of the case; namely, Mr. Trotter's appointment, and the administration of the paymastership under Mr. Trotter: and this is a part of the case which I approach certainly with a considerable degree of anxiety. Not an anxiety founded upon the difficulty which I feel in dealing with it upon the part of the noble defendant, but the difficulty which I feel of dealing with it as it respects the witness.

My lords, I am quite sure that the general character of that person is precisely what the honourable manager gave him in the opening speech. I have known him long and intimately. I lament his deviation in this particular instance from the general course of his life, and that he should have done any thing which I know must be so contrary to the natural rectitude of his feelings, as to have brought his patron, his protector, and his benefactor into the situation in which he now stands. My lords, I mean no personal offence, and I hope I shall not pronounce a word that will give any personal uneasiness to any individual who hears me; but, my lords, to do justice to this case, I must deal with the evidence fairly as I find it. Soon after Mr. Trotter was appointed to the paymastership of the Navy, the office was transferred from Broadstreet to Somerset-place. The office before had been carried on in the heart of the city, close to the Bank; afterwards it was to be transferred to this end of the town, at a great distance from the Bank, and in this new si-



tuation all the business of the payments was to be carried on.

It is a most important part in the consideration of this case, that your lordships should see with perfect distinctness, that the permission which was given by lord Melville to carry on the business at Coutts's was confined to the assigned balances, and that it was meant by him that the money upon those assigned balances should remain at Mr. Coutts's. It was not a permission that Mr. Trotter should take the money any where—that he should take any amount of money any where whether assigned or not. It was not a permission that he should deal with it, in its intermediate time, in any speculations—in discounting private bills—in buying navy or victualling bills—in buying Exchequer bills, or in the purchase of stock. It was lord Melville's intention, and I shall make it demonstrable by observations on the evidence, that it was lord Melville's clear intention that the assigned money placed at Coutts's should remain there, and that he believed, up to the period when he wrote his first letter to the board of naval inquiry, that his orders had been faithfully executed, and that the money had always remained at an official account at Coutts's.

A great deal has been said and insinuated, respecting trust being improperly reposed in Mr. Trotter. I ask in whom is man to place trust, if lord Melville was not to place trust in Mr. Trotter? As I have already stated the system of human action, all the machinery of moral conduct in this world, rests upon trust and confidence being placed somewhere. You must found upon trust and confidence, or you cannot act in human affairs. Here then is Mr. Trotter, recommended by Mr. Pitt, well connected in the country, a respectable person, connected with rich individuals in the business of banking; having a brother who was very prosperous in trade, and who has acquired a great fortune—Mr. Trotter himself well acquainted with the service, having held a situation in it; having, when in that situation, proposed some excellent plans of reform in the office, and it was chiefly owing to that plan of reform that the private recommendations of Mr. Trotter had their effect with lord Melville, who viewed him as a person by whom the business could be well executed; and had no reason to consider him at that time in any other light.

Mr. Trotter, it is to be observed, with all those circumstances to establish him as a person of trust, had, nevertheless, without lord Melville's knowledge, made use of a small sum of the public money, before lord Melville permitted its removal from the Bank to Coutts's, which shows that money-making was commenced by Mr. Trotter before that removal, and did not arise from the application to lord Melville to make the removal to Coutts's bank.

When Mr. Trotter proposed its removal to Coutts's, he addressed lord Melville with a

view to an official reform, confining it to an official reform, as the whole evidence from beginning to end shows. But before I observe on the passages of his evidence, I must again ask both the honourable manager who opened, and the learned manager who summed up this case, how they can attempt to set aside the testimony of Mr. Trotter? By what principle can they say, that a witness whom they called, whom they characterised as an honest man, who has poured out his heart, as it were, to this House, is now to be discredited?

Let us see then what Mr. Trotter says with regard to this permission to remove the money from the Bank to Coutts's. In the 129th page of the printed evidence it is said, "you stated that permission was given by lord Melville to draw money from the Bank of England to Coutts's bank; whether the only reason represented by you to lord Melville for that measure, was not to facilitate the official convenience?"—"Entirely so; I always stated so; the convenience that would arise, and the greater security of the money."\*

Here your lordships will observe, there is not a single ingredient but official convenience, and your lordships will not forget that Mr. Trotter said, with respect to the making money, that he had power of drawing, and that it was competent to him to do that equally when the money was at the Bank, only that it might have increased his delinquency. What he meant by its increasing his delinquency, I do not know; but the fact is certainly sufficiently proved, both that he did, and that he could make money, by drawing it from the Bank, before its removal to Coutts's, and applying it to his own profit; consequently, removing to Coutts's is established *positively* to be a matter for official convenience; and, *negatively*, that it was not with a view to make any money by it, as he did that before the permission: so that the money-making is not a necessary adjunct to the removal to Coutts's; and, therefore, the removal thither not to be attended with an inference of guilt. In page 130, it is stated—"But was there then, or at any subsequent time, any permission given by lord Melville to draw monies from the Bank for any other purpose?"—"Never." No permission was given by lord Melville to draw money from the Bank for any other purpose. In page 129, it is stated—"State, if you can recollect, how you represented that it would facilitate the convenience of the office that that transfer should take place?"—"I represented the inconvenience that would attend the payments from the distance of the Bank, and proposed to his lordship that a banker nearer should be allowed to keep the money in his hands till I found it necessary to issue it to the sub-accountants." And then it goes on—"Did you state also to lord Melville in what man-

\* Vide Page 932.



ner the money would be more secure?"—"I represented to him the danger of sending in drafts to the Bank every day by messengers who were obliged to bring out the produce of these in cash to supply the daily payments." It then goes on—"was there the least mention to lord Melville at the time application was made for his permission to make the change you have stated, of any private emolument to be derived to any body from it?"—"None whatever; it was never in lord Melville's contemplation, and I do not remember that it was in my own at that time." "Was the permission which was given to draw money from the Bank to be deposited till it was wanted in Coutts's bank, entirely confined to the money that would be wanted for official convenience?"—"I do not know that the conversation extended to so great a length, as to go into that minute part of the subject." "But was there then, or at any subsequent time, any permission given by lord Melville to draw monies from the Bank for any other purpose?"—"Never."

Now, my lords, without forcing your lordships to hear a recital of all the questions and answers upon this head of the case, I rely upon these, and I say, my lords, that these, together with the fact to which I have referred, of Mr. Trotter's having proved that he did actually use the public money for gain to himself, when it was kept solely at the Bank, form a body of evidence which is incontrovertible, which no insinuation or presumption can do away; which is established upon the oath of a witness who has an interest to swear directly the other way, if truth would permit it; who is still liable to have the order of the House of Commons revived to render him civilly responsible, and who, under all these circumstances, gives his testimony clearly in favour of the defendant, by proving that the change of deposit from the Bank to Coutts's was founded upon a regulation purely official, and not for the purpose of individual profit. It was done to avoid the risk in the transit of the money by the messenger who was to carry it, and secure the official convenience of the payment to the sub-accountants, by the vicinity to Messrs. Coutts's bank. Lord Melville, therefore, could not have in his contemplation any thing but official regulation upon the representation which Mr. Trotter swears he made to him. It could form no part of lord Melville's consideration that this was done for the sake of emolument to Mr. Trotter, still less with a view to emolument for himself. This is so clear, plain, and distinct, that it appears to me to require no amplification to enforce it, and that no argument can make it stronger; it stands upon the simple state of the fact, by a witness who surely there is not the least reason to suppose has, during the whole of his testimony, given any thing but clear, distinct, and honest evidence.

There is the examination of lord Melville likewise, in evidence before your lordships,

which was taken before the commissioners of naval inquiry. I must request your lordships to peruse that testimony, because you will see there, what the nature of lord Melville's conception of the regulation was, and that he too had at that time no other conception, but that it was a measure of mere official convenience.

I now come to the question regarding Mr. Trotter having made money to a very considerable amount, to the fact of his having had very large balances in his hand, and to the fact of his having increased those balances in proportion as the nature of the service and the supplies required for a war, enabled him to increase them. That Mr. Trotter increased those balances is a fact, about which there can be no doubt; but my lord Melville contemplating Mr. Trotter's antecedent conduct, founded in representations such as I have stated, is not to be tried by what Mr. Trotter has himself denominated his subsequent delinquency. You are not to take it, that the thing was permitted because it was done; and you will not suppose that a person in lord Melville's situation, placing confidence in the person he had appointed, having every reason to continue that confidence, from finding that the business of the office went on regularly, that the machine never stood still for a moment, that no complaint was made, that all the payments were regular, you are not, I say, to suppose that lord Melville knew the fact, or because Mr. Trotter's situation in life appeared to be improved, that he was therefore to suspect that he used the public money. Lord Melville knew Mr. Trotter to be connected with persons of wealth and consideration, knew him to be a person who had much opportunity of having intercourse with monied men, and one who might have other means of enriching himself than by flying to the public coffer of the country. Lord Melville at that time having his mind constantly engaged in great affairs of state, was not likely to consider Mr. Trotter's advance in life, as any thing but the pure fruit of honest industry. An unsuspecting man like lord Melville never would have dreamt that it arose from any other cause; and I think the most suspicious mind that ever was infused into a human body, finding a person constantly acting well and diligently in his office, reputably connected, and appearing fair and honest to the world, could not have drawn any other conclusion.

When lord Melville quitted the office in the year 1800, lord Harrowby was appointed; in 1802, Mr. Bathurst was appointed; both of whom continued Mr. Trotter in the office of paymaster, and neither of them ever suspected Mr. Trotter to have been guilty of these malversations. I therefore say, that taking it upon the common outside and face of things, there was no reason for suspicion. If there was no reason for suspicion, there could only be trust and confidence.

But it is contended that lord Melville has



admitted that he knew and allowed Mr. Trotter to make a profit from the money deposited at Coutts's. — Upon this part of the case, let us consider first, lord Melville's examination by the commissioners of naval inquiry, it is this: “\* Did you authorize the paymaster, in or about the year 1786, to draw the money applicable to naval services from the Bank, and lodge it in the hands of a private Banker?” “I cannot precisely fix the time, but I am certain that I did permit Mr. Trotter to lodge any money drawn from the Bank for public purposes in his private banker's hands during the period it was not demanded to the purposes for which it was drawn.” Then lord Melville is asked, “Did you give permission to the paymaster to withdraw the money from the Bank, and lodge it in the hands of a private banker, with a view to his deriving any advantage or emolument therefrom?” “If it is meant to ask me whether I ever gave any direct authority to the paymaster to use the money in the manner above mentioned, I should answer, no—but I have no hesitation in saying, that I believed and understood he did, and never prohibited him from doing so; and I believe it was so understood by others at different times, when the establishment of the Navy-pay-office was under consideration, when certainly no competent provision was made for the person exercising that trust of great extent and responsibility.” That is the manner in which lord Melville states it; now I wish to show how Mr. Whitbread states it: he is asked upon cross-examination, “† Whether he does not distinctly recollect that the averment of lord Melville upon the subject of placing it was, that he had given no other permission but to remove the money from the Bank, to a private bank, for the convenience of appropriating it to the public service?” To which the honourable manager answers, “Certainly one of the reasons given by the noble lord was, that he had allowed the money to be removed to a private banker's for official convenience, but it did not appear to me that that was the only reason.” “Did he give any other reason besides?” To which the honourable manager answers, “Yes, I understood for the emolument of Mr. Trotter, and the noble lord described the manner in which he thought that emolument had accrued, namely, by interest paid by Mr. Coutts to Mr. Trotter for lodging that money.” Now this is the general understanding of Mr. Whitbread, with regard to lord Melville's conception of the profit; but the honourable manager's examination is not confined to positive evidence of what he conceives to have been the nature of the profit, upon which I shall observe presently, but he gives negative evidence, with regard to profit, for in the course of his examination he is asked, “‡ Whether upon recollecting yourself upon this subject, you mean to state that the noble defendant ad-

mitted that he knew or permitted any emolument to be derived to Mr. Trotter from the public money, save and except what resulted from its deposit at a private banker's for official convenience?” “The noble defendant stated that he had allowed the money to be placed at a private banker's for official convenience; and when there, he had allowed or permitted, or not prevented Mr. Trotter from making a private emolument of it; and that emolument arising from the interest he was to make of it from Mr. Coutts's.” Then this question is put—“The question is not whether he restricted him, but whether he said he knew of his having any other advantage excepting the advantage before stated?” “He did not say he even knew it, but only supposed it; he did not admit that he knew of any other.”

So that your lordships will observe that Mr. Whitbread in his testimony, giving an account of what lord Melville said, says that the noble lord did not say he knew it, he only supposed it, which is precisely similar to the testimony the noble lord himself gives before the commissioners of naval inquiry. “Whether he did not also state in the same speech, that he never knew that Mr. Trotter had invested any money in Exchequer or Navy bills?” “I believe he said so.” “That he never knew he had put any money upon security of stock?” “I believe he said so.” “That he never knew he had employed any money in discount of private bills?” “I believe he said so.” “That he never knew he had employed any money in the purchase of Bank or India stock?” “I believe he said so.” So that your lordships will observe, that the testimony of Mr. Whitbread in the first place, with regard to the nature of the emolument, establishes it to be by the money lying at Messieurs Coutts's, producing an interest to Mr. Trotter from Messieurs Coutts's, agrees perfectly with the noble lord; and that in his further cross-examination, he negatives the noble lord's knowledge of every other mode of making money. In this too, your lordships will observe, that Mr. Whitbread's account of lord Melville's testimony agrees perfectly with Mr. Trotter's account, so that the account that is given by Mr. Trotter, that lord Melville never knew that the money was taken out of Coutts's by Trotter, and lent for his emolument, is a correct account according to the testimony given by Mr. Whitbread, of what lord Melville declared, and it will not be permitted to the managers for the House of Commons to consider lord Melville's testimony, when given in evidence by them, to be so dealt with, as that they shall accept just such part as they choose, and not take the whole of it. They must take the whole together; it is the nature of all confessions, and all acknowledgments, that the whole must be taken together. If lord Melville's testimony or confession is to be considered as deserving of credit, in that which makes against him-

\* Page 805. † Page 894. ‡ Page 896.



self, does it not stand equally pure and uncontaminated in that which makes for him? Is there any reason to say, that lord Melville is not as much the witness of truth (for this is all the while lord Melville's testimony given by Mr. Whitbread, and made evidence by the prosecutors), when he answers to what is in his favour, as when he answers to what is against him? Lord Melville is confirmed by their witness, Mr. Trotter, who has an interest directly the other way, if truth lay that way; and there is no other part of the evidence in this case, written or parol, that tends to disturb it.

Upon this part of the proof, then, there is a direct negative of lord Melville's knowledge of Mr. Trotter's employment of the public money, by loans or securities for his (Mr. Trotter's) gain: an absolute denial of lord Melville's knowledge of Trotter's employment of the public money in any way for his (lord Melville's) gain: and a declaration by lord Melville in the month of November, 1804, and in the month of June, 1805, to the commissioners of naval inquiry, perfectly consistent with this. Stating what Mr. Whitbread now states from his memory, namely, that he (lord Melville) supposed it was an allowance of interest by Mr. Coutts, and that that was the means, and the only means of emolument to Trotter.

Now, my lords, I will venture to say, that according to every rule which governs human testimony, according to all the probability by which human affairs are regulated, according to all principles which prevail in courts of justice, in their judgment in criminal matters, your lordships cannot infer guilt from the admission by lord Melville, that he supposed that Trotter's gain arose from Messieurs Coutts and Company's allowing interest for the money deposited there.

Observe how the matter stands; sir William Forbes, who has been long in business, as an eminent banker in Edinburgh, tells you the custom of bankers in that country; namely, that upon an account of ever so short a standing, it is the common usage to allow three per cent interest, and if it remains six months, four per cent. Was it unnatural that the noble lord; would it be unnatural that I, or that those who come from that part of the United Kingdom, should suppose, not inquiring very minutely into the mode of banking in this country, that the deposit should be attended with benefit to the party making it? I know that Mr. Coutts never did pay any interest; I know he would think it a degradation to suppose he did; I know a banker of eminence in this country would think it improper, by deviating from the common rule to tempt customers to his house by any thing but a fair belief of his credit; but it is not improbable, that a person conversant with the custom in Scotland, should suppose it had been so.

But suppose, instead of being lodged at Mr.

Coutts's, it had been lodged in the Bank of England, in Mr. Trotter's name, or in the names of the different sub-accountants, and that it had been the usage of the Bank to give interest for money so lodged; and suppose it to have been placed there without any breach of the law, would the supposition by lord Melville, that Trotter received such a benefit, be a crime in lord Melville? If then, instead of this, Mr. Trotter, by a private transaction, had received a small interest from Messieurs Coutts, the money being placed there without breach of law, and for a purpose purely official, would that be criminal in lord Melville, or would it remove or shake in any degree, the pedestal of innocence upon which I trust I have placed this transaction? The transaction is simply this: Mr. Trotter says to Mr. Dundas, there is danger in sending these drafts to the Bank; we cannot trust the messenger with thousands of pounds; there is a great distance between the Bank and the Pay-office; it is inconvenient, and a risk to themselves to go so far; permit me to send the money to Messieurs Coutts's for safe custody; the assigned public money which I have a right to draw. Lord Melville permits it, and then there is a conjecture, or if you will, a belief on the part of lord Melville, that Mr. Coutts may (contrary to the fact), give Mr. Trotter an interest for his deposits. Does that change its feature of a public account? Is it not still an account in the hands of Mr. Trotter? Is it not still an account in the regular course of the office? Is it not still an account in the hands of a legally entrusted paymaster? Is it not as much, and as completely an account at Mr. Coutts's, in the hands of a legally entrusted paymaster, as the money *written off* by Mr. Tierney to the sub-accountant, Mr. Swaffield, in the Bank of England, is an account to Mr. Swaffield in the Bank of England, and no longer an account of George Tierney, treasurer of the navy? It is not the change of place, as I said before, that alters the deposit, it is the change of person; it is the giving credit to the draft of a new man; and whether that was at the Bank, or at Mr. Coutts's, is not a question which will affect the law.

I have stated to your lordships then, that lord Melville agreed to the deposit at Coutts's, as a mere official regulation—That he knew nothing of Mr. Trotter's profit as he actually made it, but that he was totally ignorant of it—That what he suspected to be his profit, was a profit of a different kind; that is, a profit perfectly consistent with the official regulation, and with the assigned balance remaining at the place of deposit, until the service required it to be paid away—That he had no reason to suppose that it ever was in a different situation, until the month of June, 1804, when lord Melville (after the commissioners of naval inquiry had been instituted, and had commenced their examination of Mr. Trotter), was informed by Mr.



Trotter, to his infinite surprise and astonishment, that it had been so used, and was informed that the account at Coutts's, which he had conceived to be a pay-master's account, that the money which he had conceived to be, as it were, deposited in the strong box of Alexander Trotter, paymaster to the navy, at Mr. Coutts's, and with no other person whatever, turns out to be a mixed account, in which there are blended together, on one side of the account, all Mr. Trotter's receipts for the public, all Mr. Trotter's receipts for himself, all Mr. Trotter's receipts for lord Melville, all Mr. Trotter's receipts for other persons with whom he had money dealings; and on the other side of the account (what the honourable managers no doubt, to their great distress, were bound by their duty to look into), the petty payment of every individual who had a housekeeper's or washerwoman's bill paid by Mr. Trotter in his family, or by lord Melville's upper servant in his. I say this discovery of the mixed account was matter of utter astonishment to lord Melville. He conceived that account to be kept officially. Could he have conceived any thing else? when he found that in sixteen long years, during which a hundred and twenty-five millions of the money of the country had passed through his hands, there had not (notwithstanding this now blamed and calumniated official regulation) been a stop put for one instant to any one payment, however minute, or a single poor seaman, miserable widow, or orphan child sent from the Pay office at Somerset-place, without receiving the money that was due to them. How could suspicion infuse itself into any man's breast, under such circumstances as these? how could suspicion infuse itself into lord Melville's, when he found the whole business of his office going on regularly? and yet it is to be an article of charge against him now, because, perhaps, the strength of the other charges may not prove sufficient, that he has been guilty of official neglect, because he did not regularly inquire into the conduct of the office.

My lords, if we talk of official neglect, there is direct positive proof that there was none. The machine was put in motion by lord Melville, and went on without the smallest interruption to the last, in all inferior matters. With regard to the superior matters, you have it in evidence from Mr. Trotter, that upon every occasion, when extraordinary circumstances occurred, he always found lord Melville's ear open to the public concerns of the office, though extremely inattentive to his private affairs.

My lords, not only so, but with respect to the regulations for the pay of the navy, which have so much to do with the comfort of the sailors and their families, and which is the pure result of humanity, the result of kind consideration, the result of humane attention to those who are in the lower situations of life, and who require all the comforts that can

possibly be administered, to make them happy; there you find the noble lord active in the discharge of his duty: and I will venture to say, with the exception of one statute, put upon the statute book by Mr. George Grenville, that no treasurer of the navy, until the noble lord was appointed, ever proposed any legislative regulation, and that there does not occur, from the existence of the Navy-pay-office, to the present time, any treasurer of the navy, except the noble lord, who has made it a part of his duty, by regulating the pay to reward the services of those brave men, to whose unrivalled intrepidity and courage it is owing that I am now enabled to address your lordships in the cause of innocence.

I state to your lordships, that there is not any one person, during the whole history of this important office, that has put upon the statute book laws more fraught with wisdom, or more congenial to humanity. Is such a person then to be supposed guilty of the sordid crime of peculation?

But to return to this mixed account. I wish to state to your lordships, a very short piece of evidence upon that subject; it is comprised in one sentence, but it is a most important sentence, because, certainly it would have given a very different character to this case, if lord Melville could be conceived to have had any knowledge of Mr. Trotter's mixed account. In that case, he would have been in a situation to have, with his own knowledge, participated in the public money, if it should have happened that he knew at any one time when he was supplied with money from that account, that there was less money of his at the credit of that account, than he (lord Melville) drew for. If this had been the case, lord Melville's knowledge of the mixed account would undoubtedly form a feature of suspicion, which would go a great way to fortify some of the inferences contended for by the managers; but the evidence upon that is distinct, and as short as it is distinct. It is in page 137, in these words: "Was the mode in which you kept your account with Mr. Coutts, and the mixture of private and public money entirely your own act, without any knowledge of lord Melville?" "It was an act entirely my own, and lord Melville never had any knowledge whatever of the manner in which I kept my accounts at Mr. Coutts's."

Now, my lords, it is unnecessary, after that positive declaration on the part of Mr. Trotter, which no re-examination has been able to shake, which no inference can by possibility turn aside, to say more. It is in corroboration of lord Melville's declarations of the reason given to the commissioners of naval inquiry, why he would not answer the question put by them, and proves the real truth of the fact. Here you have the witness of truth; you have Mr. Trotter declaring that lord Mel-



ville did not know any thing of it while it was going on; and that his lordship never knew any thing of it, until the month of June, 1804, appears by the evidence which the honourable managers have given, containing the account of lord Melville's depositions or answers, before the commissioners of naval inquiry. Therefore, my lords, I think I may state boldly to your lordships, that I have advanced to this point, that with regard to the first treasurership, your lordships will not say that it is possible to infer guilt: and as to the second treasurership, I think your lordships must say, that the regulation which was made by lord Melville, for moving the assigned money to Coutts's, at the instigation of Mr. Trotter, or rather, that regulation which Mr. Trotter could have made himself, which was not done by writing but was done by word, which Mr. Trotter may be said not so much to have asked lord Melville's authority to do, as to have thought it right to communicate to lord Melville when done, was a mere official regulation. That lord Melville was ignorant of the applying that regulation to any express object of personal profit, and that lord Melville was equally ignorant of Mr. Trotter having raised the mixed account, and having mingled together all the different monies, public and private, which passed through his hands.

My lords, in this situation of things, and with these impressions on your minds, I now proceed to examine the different items, which have been the subject of charge by the Commons. I stated to your lordships that I should, in the discussion of the first 10,000*l.*, discuss the second, but I believe in my address to your lordships, being hurried on with the heat and agitation of speaking, I omitted to state some things respecting that second 10,000*l.* I must, therefore, shortly observe, that your lordships will find that there is no evidence whatever, that that 10,000*l.* was drawn directly from the Bank, and applied to secret services; but that on the contrary, that 10,000*l.* was drawn from assigned monies at Mr. Coutts's; that it lay there as assigned money, at the time it was applied to secret services; that it was assigned for naval purposes; that it never has been finally applied to any other purpose, but has been restored to those naval purposes for which it was originally assigned; and that under all the presumptions to be derived from lord Melville's declaration compared with the history of the times (for this 10,000*l.* was applied in the period of 1792 and 1793) it is impossible, with any justice, to conclude that lord Melville used this for his particular profit. On this head, I beg again to refer your lordships to the arguments I have used, as to the analogy to be drawn from the 40,000*l.* the use of which has been disclosed, because its disclosure was no longer dangerous, either to the public or to individuals.

My lords, I come now to state to your lord-

ships very shortly, the circumstances of the loan of 4,000*l.*, which is not alleged as a subject of criminal charge upon the articles, but is rather brought to prove a corrupt mind in lord Melville, by showing that he borrowed 4,000*l.* of Mr. Trotter, shortly after he (Mr. Trotter) came into office, and that Mr. Trotter lent that money without interest. A great deal was said by the honourable and learned manager who summed up, of the meanness of lord Melville for taking this money without interest. It is a singular circumstance, that the honourable manager who opened these charges, should relieve lord Melville from the imputation of avarice, and should state that he sought that money only for the purpose of obtaining power, and that the learned gentleman who summed up, should endeavour to fasten upon him the basest meanness. Those two arguments are perfectly inconsistent: a man who obtains money merely to get power, does not mean to deprive a person near him of profit. Your lordships will see how this part of the case stands upon the evidence, and I think when I shall have made one observation upon the evidence, it puts an end to all inference of corruption on the part of lord Melville, or that he thereby put himself into the power of Mr. Trotter, so as to make it impossible for him to prevent Trotter from using the public money for his profit.

Mr. Trotter came into office upon Mr. Douglas's death; the receipt is in evidence which lord Melville signed to Mr. Douglas's executors for two sums, amounting to 4,500*l.* or thereabouts, stated to be Exchequer fees of the old treasurership; and it is likewise stated in evidence, that the constant usage of the office, with regard to Exchequer fees, is that they stand upon a footing different from the other money, that they have always been considered as the paymaster's money, and that the paymaster has held them for the purpose of making a profit. This is avowed, declared, and understood to be the usage of the office. Then Mr. Trotter has this sum of 4,500*l.* put into his possession by lord Melville, lord Melville having received it from Mr. Douglas. I do not know that there was any necessity for lord Melville's putting it into Mr. Trotter's possession; he might have directed any clerk in the office to pay the Exchequer fees, and then lord Melville would have stood in the situation of the paymaster; but it never entered his mind to make a profit of this himself, instead of his paymaster. I wish to read the words of the evidence on this subject, page 116. "Why did you advance a sum of money to lord Melville without interest?" "I did not feel myself entitled to charge his lordship interest for money which had been put into my hands, under the situation which I have described." "Did you describe to lord Melville the reason why you did not charge interest?" "I did not, nor did I press it upon his lordship's attention so much as to know whether he ever knew that it did bear interest or not."



Your lordships will observe then, that according to the testimony of Mr. Trotter, lord Melville is totally ignorant of this 4,000*l.* being lent to him without interest, and with regard to any impropriety in lord Melville applying to Mr. Trotter (at that time represented to be in poor circumstances), to obtain a loan for him, that seems a singular observation, when in other parts of the case, the managers accuse lord Melville of making Mr. Trotter act as his private agent. If a person wishes to borrow a sum of money, to whom does he apply, but to his man of business? and under these circumstances, was it unnatural that lord Melville should employ Mr. Trotter to get a sum of money for him? Mr. Trotter says, that the situation in which he stood, made it a matter of conscience in him to forego the gain he might otherwise have made; and that with regard to lord Melville, he never brought it to his mind, or observed to him that he had the money without interest; and therefore, surely it is against all rule to say, that you are to presume that lord Melville had a full knowledge that this money was without interest. It was a temporary loan, and your lordships observe, that it is very soon after written off, and no longer appears in the accounts. I humbly submit to your lordships therefore, that up to this period, there is nothing that can fasten a corrupt use of public money upon lord Melville, nothing that can fasten a corrupt connivance at the use of public money, nothing that can fasten a corrupt intention, upon the part of lord Melville, afterwards to profit by public money.

I have now reached the transactions in the years 1787 and 1788, namely, the remittances to Scotland: they stand upon this ground; they were made by Mr. Trotter, and Mr. Trotter declares in his evidence, that they were very soon afterwards repaid. The words of Mr. Trotter's evidence are these, your lordships will find them in page 133. "Have you any reason to doubt, but that the payments made upon that subject, were repaid out of the private funds of lord Melville?" "I have no reason to doubt it, as there were frequent payments subsequent to that, and they went in reduction of the general account, in which those sums were included."\*

Thus, my lords, I trust, I have disposed of every part of these transactions up to the year 1789: and now, my lords, we come to that branch of the cause which was rested upon so mainly, and particularly by the honourable and learned manager who summed up this case. I have been saved a great deal of trouble in what I shall address to your lordships upon this part of the case. I shall certainly not repeat, if I can avoid it, any one argument that was used by my learned friend, because by repeating it, I should incur the risk of destroying its effect. But there are observa-

tions, which do not seem to me yet to have been made, which are extremely important, and I am sure your lordships will not think that in a case of this sort, I trifle with your lordships time, if I express a strong anxiety to meet this part of the case in the fullest manner.

My lords, the honourable and learned manager who summed up, made his observations particularly upon the part of the case to which I now refer, I mean the purchase of 13,500*l.* of India stock with Lind's loan.

From having the honour of living with the learned manager in the most intimate friendship, and sometimes conflicting with him professionally, I know him to be possessed of the greatest address and ability; and it is evident that he felt that it was necessary to remove the impression made by lord Melville's declaration, that he considered it illegal and most improper for him to use the public money for private emolument. When the proposal was made to lord Melville by Trotter, that he might apply the public balances in the purchase of India stock, Mr. Trotter says, his lordship treated the proposal with indignation, and he added that he supposed he had incurred lord Melville's displeasure by making the proposal. This, when combined with the innocence which I contend I have established to exist down to this period, forms a part of the case so important, and is so fatal to every hope of conviction, that the learned manager felt that all his genius, all his powers of observation, and all his eloquence should be applied to it. Accordingly, my lords, he attempted to make out this head of charge in direct contradiction to the parol testimony adduced by the prosecutors themselves.

My lords, it is not the course of justice in this country, that the positive testimony adduced by a prosecutor should be done away by the inferential reasonings of that prosecutor in opposition to the positive evidence produced by him. Yet I shall show your lordships, both in this case, and in the case which follows, respecting the loyalty loan, that that inferential or presumptive reasoning on which the managers rest their case (be it fit or unfit for them to introduce it), is entirely set aside by the inferences and presumptions on which we rely, confirmed by the testimony of their witness.

My lords, this is one of the great features of the present extraordinary cause; your lordships will bear it in your minds, you will ruminate upon it, you will apply to it the principles which ought to govern all cases of a criminal nature, and I am sure the noble defendant will have the full benefit of that deliberation. You will remember, that presumptions are to be made in favour of innocence, and not of guilt: that a criminal is not like a civil cause: that you are never to presume that any thing has been actually in the knowledge of the party accused, unless it is proved to be in his knowledge: that im-



puted acquiescence does not govern in matters of crime, but that knowledge must be positively proved.

The honourable and learned manager dressed up this part of the case by introducing the noble defendant to your lordships' notice as a person of an intrepid mind, and of an ardent character—as a person who had long practised in political and in public life. Who had been educated to the bar, and had risen to the highest eminence in that profession which the bar of Scotland would admit. Who had every attribute that could render him great or considerable; that he had all which legal education, great practice, political information could give, and, above all, whatever a great knowledge of the world, and of mankind, could by possibility accomplish. My lords, he did this for the purpose of contrast, that he might next represent the noble and eminent person whom he thus justly described, to be reduced to the most humiliating state in which human nature is to be found, if he could be supposed to be so blind as to be imposed upon by Mr. Trotter's story of Mr. Lind's loan. He therefore contends that your lordships must draw this conclusion, that he knew all along that it was guilty public money which he received, and laid out guiltily in the purchase of India stock; which, as the superintendant of Indian affairs, he must be guilty in holding at all. This, my lords, is a grave charge, it is severely stated, and it must be manfully met. I will venture to say, that in this extraordinary case, where concealment has produced accusation, this, the most laboured, is the least founded of all the charges. Now, that the facts are disclosed to the world; now, that the mouth of the witness is opened, the imputation vanishes. Here I am entitled to take my stand. Here I consider myself as having obtained the *fulcrum* which Archimedes wished for, by which (I mean no offence, my lords) I can move this judicature at my pleasure, because I can place myself on the clear and unobscured basis of truth. The truth being, that the noble lord was entirely ignorant of the imposition that was practised upon him, respecting the pretended loan from Lind, until the report of the commissioners of naval inquiry was published. If this be so, and I will prove it, all strained presumption, and forced inference must vanish from before us, and the noble lord must be acquitted.

This is the first instance of Mr. Trotter having ventured to propose to the noble lord to use the public uncalled-for balances. When he made the proposal, it was received with the utmost displeasure by lord Melville; and Mr. Trotter never afterwards dared to repeat it. But, says the learned manager, this displeasure must have been merely pretended; how came he not to chace him from his service? This is a most extraordinary conclusion indeed! That a proposal, which being then made for the first time—a proposal which

must have shown that all the official regulations had been observed, by proving that the balance of money was lying where it had been directed to be deposited, should have created suspicion, and led to immediate dismissal! Mr. Trotter, in his examination in chief, says, that he (Mr. Trotter) represented that there were balances in his hand, that it must be long before those balances could be required for the public service, and that they could, in the mean time, be used for the particular purpose of buying the India stock. On Mr. Trotter's representing that there were balances in his hands unused, was the noble lord to suppose that Mr. Trotter had withdrawn his balances from Mr. Coutts's—that he had put them out on Navy bills—that he had sent twenty-five thousand pounds to Scotland, there to remain at interest, at his banker's, for his (Mr. Trotter's) benefit? On the contrary, could any conclusion be suggested to lord Melville's mind, but that his official regulations were kept? And because he (Mr. Trotter) had the indelicacy, or the impropriety, to make this proposal, was that a reason for removing an otherwise apparently faithful officer, under whose management it appeared that the regularity of the payments continued unvaried, and who had, for a period of four years, at that time, discharged every duty of his office, without any one wheel of the machine, as I formerly expressed it, standing still, for one moment? To say that a person should discharge a servant, otherwise valuable, for such a thing, is most unreasonable; but to infer, because he was not discharged, that lord Melville was guilty of the crime of using the money, which the evidence proves him to have rejected, is a stretch which I think could not have been attempted even in the most petty criminal jurisdiction in this country.

My lords, I come now to state to your lordships, that which seems to me the real and true nature of this transaction. In the first place, let it never be forgotten, that Mr. Lind is made the apparent holder of this stock; that it is in evidence to your lordships, that in the year 1791, it was transferred to the name of Montague Lind. Now, there is no doubt but the transaction, as Mr. Trotter states it, was this, that a conversation arose respecting the state of India stock, and the probable prosperity of our affairs in India. Not a conversation when he was with lord Melville upon official business, but when he was with him upon a visit at Wimbledon. The future prosperity of India was, at this time, the constant and favourite subject of lord Melville's conversation in private; and in his speeches in parliament, he had repeatedly said, that India would so rise in prosperity, that India would assist England, instead of England being obliged to assist India. This was his constant theme. In his conversation with Mr. Trotter, he had said, that he was sure that India stock would rise in value; on



which Mr. Trotter says, would it not be advisable, then, for you to possess some? To which lord Melville said he had no means of purchasing. Then Mr. Trotter makes the proposal, which was received with indignation. And Mr. Trotter adds, that he conceived he had incurred lord Melville's displeasure by having proposed to use the dormant balances for that purpose. Mr. Trotter afterwards proposed that he should borrow money for the purpose; and he afterwards led lord Melville to believe that he had done so. But the learned manager asks if it is possible, that, upon personal security merely, any body could suppose that the money could be borrowed? And argues, that on this improbability, guilt is to be presumed. I own it astonished me very much, when I heard that argument from the learned manager, because, in the first place, it is leaving out a considerable portion of the fact of the case; and, in the next place, it is totally forgetting the history of the times.

Your lordships will observe, what the nature of this transaction is; that this is a purchase of 13,500*l.* or, if the honourable managers will, of 14,500*l.* of India stock; that it requires 23,000*l.* to make the purchase; that the purchase is made at different times, of 6,000*l.* 6,000*l.* then 2,500*l.*; or, on the other supposition of 13,500*l.* stock, of a last payment of 1,500*l.* This money Mr. Trotter represented to lord Melville to be advanced by Mr. Lind; but, in point of fact, it turns out that Mr. Trotter advanced it from public money in his hands, but, concealing the fact, imposing upon lord Melville the belief of the loan by Lind. Your lordships will see by the evidence, that soon after that period, three thousand of the twenty-three thousand is paid, and that one thousand pounds stock is transferred from Mr. Lind to lord Melville. Now, I beg your lordships will attend to that fact. The managers make use of it for the purpose of showing that it was 14,500*l.* of stock that was bought, not 13,500*l.*; and they conclude, that, therefore, the interest of the money was less than the dividends, and, consequently, that there was a profit of 10*l.* a year to lord Melville. An observation of so little importance, that it is hardly worth stopping to state it. But the true use to be made of that fact is this, that lord Melville wished to increase his qualification as a proprietor—That Mr. Trotter had directions to purchase 1,000*l.* stock for that purpose; but Mr. Trotter, instead of making a new purchase, had a thousand pounds stock transferred from Mr. Lind to lord Melville, that it might appear to lord Melville, by the transfer from Mr. Lind, that Lind held India stock for lord Melville, and that his lordship's qualification was part of the stock purchased on his account with Lind's money.

It appears too, that just before this transaction of transferring the 1,000*l.* India stock, the whole stock, (whether 13,500*l.* or 14,500*l.*)

which was originally purchased in the name of Philip Antrobus, was transferred to the name of Lind, so as to keep up the appearance to lord Melville, if he should ever make any inquiry into the subject, that this stock which Mr. Trotter pretended to buy with Lind's money (but actually bought with public money) was actually in Mr. Lind's name. So that the natural conclusion, therefore, by lord Melville, would have been, that it was purchased with money borrowed from Lind. Thus, the imposition on lord Melville was complete. Now, with regard to the probability of getting such a loan upon the stock, and upon personal security, it is to be observed, that 3,000*l.* was paid, which reduced the loan to 20,000*l.* on a stock worth 23,000*l.* and that it was then a rising stock. Here, then, is more stock than money; therefore, there is enough to make good the loan, in case there should be a fall in the stock. In addition to this, lord Melville's personal security was bound in this transaction, though he did not give a written acknowledgment, just as his son's personal security was in the transactions with Mr. Sprot. Above all, my lords, attend to this, that this transaction was in 1789—that it was at a time when the noble lord was in the plenitude of power—when there were many persons who would have been most ready to have served him with that, or more,—that it was at a time of profound peace—when the interest of money was four, or at most, four and a half per cent; and when there was no person, except one as negligent as the noble lord, who would have thought of entering into a transaction at five per cent for any permanent time. All who know the history of the times, and the state of loans of money at that period, know what I say to be true. If, therefore, we are to have recourse to probabilities, I ask, if it is probable, nay, if it is possible, that the noble lord, if affected with the love of gain, if desirous to make a profit of the public money, would have paid over, in the name of Mr. Lind, the purchase-money, to procure the stock, and would, every year, have paid interest at the rate of five per cent to another person, for money which he himself advanced, paying at a higher rate than the market interest of money, at the time, and thus cut off from his profit all the difference between the interest of his money and the profits arising from the dividends of the stock. To have done so would have, indeed, entitled him to be considered as that description of human being to which the learned manager compared him; if he could be supposed to have borrowed money, under the circumstances here described, at an interest of one per cent, or one half, above the market price, when he had nothing to do but to go to the Bank, and take it for nothing, he would have deserved to be considered a driveller. But no such fact existed, and it only shows the strong desire to stretch probabilities, and to raise inferences beyond any thing that was ever attempted in a court of justice before.



But, my lords, this is not all. What is the nature of the transaction? Is this a stock-jobbing transaction—a speculation in the funds—a transaction that lord Melville, president of the board of control, treasurer of the navy, one of his majesty's privy council, an eminent member of parliament, the friend and co-adjutor of Mr. Pitt in all the public affairs of this great empire—is this the sort of act on which to convict lord Melville of high crimes and misdemeanors? Is he, upon such evidence, and by such inferences, to be considered as guilty of speculating in the funds, over which he had a control? My lords, this is not a purchase of stock, for the purpose of selling again; it is not a purchase for the purpose of making advantage by the turn of the market; but I am entitled to state this transaction (if lord Melville had thought it eligible to enter into it) to be exactly similar to the purchase of an estate. If he had thought that he could have commanded the money requisite for the purpose of purchasing a considerable estate, which he thought might increase materially in its value, in consequence of the natural improvement of the country arising from natural causes, and superintending care, he had a perfect right to have done so, and had as good a right as any man in the kingdom, to lay out his own money, or borrowed money, in the transaction. In the same manner, with that opinion of the funds of the East-India Company, he was no more to be excluded from purchasing in those funds, than he was to be excluded from purchasing an estate, or from purchasing in the general funds of the kingdom. Nay, more, if it suited lord Melville's convenience to vest a sum of money, permanently to remain in India stock, like the purchase of an estate, which he was to keep, and not to go to market with, like an estate-jobber, lord Melville did a right act towards the public, by showing thereby his opinion of the affairs of India, upon which so great a part of the prosperity of the affairs of this country hinged. I say, therefore, in its foundation it is an honest transaction; in its character it is a rational transaction; that in its concoction lord Melville was totally ignorant of what passed behind the scenes. There it is all Mr. Trotter and Mr. Lind, and lord Melville knew nothing of it, as Mr. Trotter has sworn, till after the report of the naval commissioners, in 1805, sixteen years after the period of the purchase.

My lords, I have stated that this transaction began in time of peace, when money was at low interest. Mr. Trotter took this money from the public balances, without the knowledge of lord Melville; applied it to the purchase of stock for lord Melville; made lord Melville believe it was Mr. Lind's; he had Mr. Lind's transfer of 10,000*l.* of that stock to lord Melville; he had 13,000*l.* transferred to Mr. Lind's name; and he made lord Melville pay interest regularly for it. There-

fore the effect was this, that he (Mr. Trotter) in times of peace, when he could not lend 23,000*l.* taken from the public chest at the rate of five per cent did make five per cent of it, by charging it to lord Melville. If we are to have recourse to inferences, to deal in presumptions, is it rational to presume that lord Melville knew this? or more rational to presume that Mr. Trotter concealed it from him for a double purpose? First, for the purpose of showing that he was anxiously desirous of serving his patron and his protector, by appearing to obtain the loan for him; and next, for the purpose of obtaining to himself a better interest for public money, than he at that period of time could make any where else.

There is but one other matter, with which it is necessary for me to detain your lordships in this part of the case. It was observed, by the learned manager, that as soon as lord Melville received this boon from Mr. Trotter by Lind's loan, all restraint was removed, and Mr. Trotter was left to use the public money to any extent. That is, when this great thing is done for lord Melville, by which he is to gain 10*l.* a-year, according to our supposition, and afterwards to gain a little more—by which he is to have the public money lent to himself, and to pay five per cent for it, when, if he had good security to give, he might have got it at four per cent from any other person, Mr. Trotter is supposed to have done lord Melville so infinite a favour in his communications to him, that he may be allowed to carry his delinquencies, as to the use of the public money, to any extent; accordingly, a state of the balances used by Trotter, is produced. In 1788, 61,600*l.*; May 31st, 1790, 64,800*l.*; 31st March, 1792, 102,388*l.* 9*s.* 8*d.*; 31st October, 1793, 115,000*l.* You then have the 30th of April, 1794, 161,245*l.* 17*s.* 9*d.*; 23th February, 1795, 209,875*l.* 17*s.* 9*d.*; in 1795 again (30th April), 310,325*l.* 17*s.* 7*d.*

Now, my lords, I must again advert to the history of the times; it is impossible to try a great state cause without doing so. Your lordships cannot fail to recollect, that when the small balances existed, it was a time of profound peace. There are other balances in evidence before your lordships, in 1788, when there was a rupture with Spain, when the consequence of that was an increased navy; when, in consequence of that increased navy, more money was issued to the treasurer, the balances in Mr. Trotter's hands immediately increased. Yet this preceded the pretended loan from Mr. Lind, on which lord Melville regularly paid five per cent to Mr. Trotter. After the threat of war with Spain was over, and the expenses were again reduced, peace continued until 1793. Here, then, were three years for the increase of balances, after the supposed favour procured by Mr. Trotter for lord Melville, by Lind's pretended loan. But Mr. Trotter's balances fell down to the peace average; because, the navy fund did not admit of Trotter taking



more, not because lord Melville encouraged him to take more. Mr. Trotter's balances, therefore, do not depend on any thing but the navy money being sufficient to admit of their being large. For, when the war breaks out in 1793, Mr. Trotter increases his own balances, for his own private emolument. He could not have done it before, if he would have done it. The increased services of the navy required increased supplies; which made larger floating balances, and afforded Mr. Trotter the power of drawing out larger sums from the Bank. I submit, therefore, that the fact of having permitted Trotter, after 1789, to increase his balances, cannot, by possibility, be laid to lord Melville's charge, in the manner in which the learned manager stated it.

My lords, between the period of the purchase of India stock, in 1789, and the transaction of the Loyalty loan in 1797, it does not seem to me, that there is any thing upon which the honourable managers have observed, or given evidence, that has the least tendency to throw a reflection of corruption on lord Melville; so that your lordships will observe, that from the 10th of January 1786 to 1789, Mr. Trotter had never dared to mention to lord Melville, that he (lord Melville) might use the public money: and from 1789 to 1800, when he went out of office, there never had been the least mention of it. So that again eight years elapse, during which time, there is not any transaction, to which it is possible to attach any thing like the pretence of evidence, that lord Melville has been corrupt.

Now, my lords, with respect to the Loyalty loan, the very name of the fund sufficiently designates its nature: My lords, it was a contribution, patronised by all persons in power—a contribution for the purpose of elevating the spirits and the stocks of the country. At the same time, it was a contribution made upon the most notorious knowledge of the circumstances of parties; that they were subscribing, as it were, for the encouragement of a public measure; but that they did not, therefore, pledge themselves that they were monied men to the extent of their subscription. Can any thing be more indicative of this characteristic of that fund, than Mr. Pitt standing at the head of the subscribers for 10,000*l.*? To whom your lordships, with the other House of Parliament, in the course of this year, have done the great and munificent act, felt to be due to a great statesman, of paying his debts. This shows, that it was utterly impossible that Mr. Pitt was to pay the actual money for his loyalty subscription; and it was notoriously so understood at the time. Your lordships will see there are other ministers, and other persons of consideration, subscribing largely; and that the three persons, considered as at the head of administration at that time, lord Grenville, Mr. Pitt, and Mr. Dundas, subscribe 10,000*l.* each. Now,

this is one feature of the Loyalty loan—a feature which negatives gain—a feature which raises a presumption directly against profit, and raises this presumption, that it was meant to pay the first dividend, and then to get rid of the stock. I firmly believe, if this matter could be inquired into by evidence, that the transaction, with respect to the purchase of Loyalty, would be found to be what I have described it. But, my lords, Mr. Henry Drummond is dead. Here, again, we are deprived of a witness.

My lords, the first payment of this stock is repaid by Mr. Trotter; but it is in evidence, that he did not pay it in the first instance—it is in evidence, that he knew nothing about it. This is proved expressly by Mr. Trotter:—“To whom were the directions given for the purchase of 10,000*l.* of the Loyalty loan, in 1797?” “I gave no directions respecting that, to the best of my recollection.”\* And then he goes on to speak more positively, that he gave no directions about it. “I understood you to state, that you did not originally give directions, nor are cognizant by whom the direction was given for the purchase of the subscription of the 10,000*l.* Loyalty loan?”—“I am unacquainted who gave directions respecting that Loyalty loan; at least, I have no recollection of that, and I do not find that it passed through me, or by my orders.”† This establishes therefore that Mr. Trotter did not do it. I have first, then, shown your lordships, that it was a stock of subscription, but not a stock of gain; and now I have shown your lordships, that Mr. Trotter, the supposed minister to lord Melville's profit, is not the person employed in the purchase of this stock. So, that he who is always to be looked on as the actor, when any scene of profit takes place, is absent here, and negatives any concern with it. The instalments were paid by Coutts, and repaid by Mr. Trotter, who repaid it out of the mixed account; into which, without lord Melville's knowledge, his money went from whatever quarter it came. Being repaid out of the mixed account, upon which no balance is struck, it is carried to the account current, on which no balance is struck till 1800; and lord Melville hears nothing of it till that period, except one thing, which is most important, viz. that he executes a power of attorney to Mr. Trotter's banker, to sell the stock to Mr. Trotter's order, and for his benefit; and that this order is not confined to the particular stock in question, but extends to all the other stocks possessed by lord Melville—stock, which it is said, he obtained criminally (viz. 7,000*l.* Reduced) but which I will show has no feature of crime; and other stock, which lord Melville had from his son at the time he settled his estate in Scotland upon him, a fact which the managers have not any where observed upon. Thus, all his stock, of every description, is at this time



put in Mr. Trotter's power, to use for his (Mr. Trotter's) own re-imbursement. Will any body say, after this, that Mr. Trotter was not well secured, by being thus vested with an authority, by which he had it in his power to go to market, and sell the Loyalty loan of 10,000*l.*? and if he sold it at a loss he had other stock to sell, till he was completely reimbursed. Was there any reason on earth, why lord Melville (if, instead of the most inattentive, he had been the most attentive man to his private affairs) should not have laid his head upon his pillow, and slept in perfect confidence, that all was settled by this transaction?

On the 27th September, the last payment was made on the loyalty; on the 28th, the power to sell all the stock was executed. From that moment, he had a right to dismiss from his mind all consideration of that stock, as the stock of the person to whom the power was granted, and no longer the stock of himself, who granted the power.

My lords, this is the situation with regard to this loyalty stock, but the case does not rest here. I have an observation on the evidence still to state, which I trust, will give you a clue, not only to unravel the loyalty loan, but many other parts of this most extraordinary case. Mr. Trotter states, that ample security was transferred to him; he is the master and controller of stock, of the value of 20,000*l.* for the advance of 10,000*l.* on the loyalty. My lords, instead of contenting himself with that security, from a motive which he states (an anxiety and attention to his own interest) he transfers the loyalty advance to the Chest account. He is asked, "What was your reason for transferring the loyalty loan money from the account current, to the Chest account?"—"It was from an anxiety, an attention to my own interest. Lord Melville, was indebted to me, as a private individual, only upon the account current, and I considered him indebted, as I said before, to government, for the balance upon the Chest account."—"Did you state to lord Melville, that you wished, or intended to transfer this loyalty loan money, from the account current to the Chest account?"—"I do not recollect, that I positively stated it to his lordship, but I delivered accounts which bore it upon the face of them."—"Did lord Melville approve of the transfer of the loyalty loan to the Chest account?"—"He neither approved nor disapproved of it. He took the accounts without any consideration."† And it is in evidence likewise, that Mr. Trotter never called his attention to the item.

Now, my lords, let us see a little what this Chest account is. I say, that this Chest account is a memorandum for a particular purpose—it is a memorandum for money of a certain description. The 10,000*l.* was carried to it in Mr. Douglas's time by Mr. Trotter—

the 10,000*l.* in 1792, and the 40,000*l.* in 1796, the sum altogether of 60,000*l.* Lord Melville knew, perfectly well, that it was the proper place for this memorandum to be made, because he knew that that was *requisition money*—money for public purposes, and carried, in the first instance, directly to the Chest account, and never passed through any other account. But the loyalty loan is made to pass from the account current to the Chest account. So that by the avowed act of Mr. Trotter, from his anxiety for his own affairs, without any communication to lord Melville, this 10,000*l.* loyalty is rendered public money, and the witness must be taken to say, that lord Melville did not know it; and I shall show presently, it is impossible lord Melville could know it. Mr. Trotter says positively, lord Melville never examined his accounts; he speaks to his lordship's carelessness in his private affairs, and I shall show your lordships *ex evidentiâ rei*, from the facts and circumstances of the case, that Mr. Trotter must be taken to be speaking truth in this, even if he could be supposed to speak truth in nothing else. Mr. Trotter I have stated to have been secured in a sum of money equal to 20,000*l.* when the loyalty loan was paid up. Mr. Trotter of his own act, notwithstanding that security, transfers the 10,000*l.* loyalty to the Chest account. What was this Chest account? Suppose the instant afterwards, Mr. Trotter and lord Melville had both died, or suppose Mr. Trotter had died and left no vestige behind him, or traces of what the nature of their transaction was, and the Chest account had appeared; would not lord Melville have stood in the situation, of having given complete security for the advance of the loyalty, and yet, notwithstanding, remained responsible to the public, for the whole amount of these advances upon the Chest account? For the Chest account is a memorandum which lord Melville could not controvert, because the 40,000*l.* was put to it, and the two sums of 10,000*l.* each were put to it, so that if the loyalty had remained there, he must have paid it. Then, my lords, is there not evidence from the very transaction itself, that what Mr. Trotter says, with regard to lord Melville's attention to the public affairs, and his inattention to his own, must be true? Where is that person in the degraded state of human nature, referred to by the solicitor general, who having had this item pointed out to him in the Chest account, would not have said, "What! Mr. Trotter, do you mean to charge me in this double capacity? Is your anxiety about your own interest so great, that you are not contented with having this power to sell the loyalty loan for your own benefit and reimbursement, but you must make me and my representatives liable to the public in 10,000*l.*? and, what is more, liable to be questioned in the high court of parliament by impeachment of all the Commons of the united kingdoms of Great Britain and Ireland, to answer to



charges, which if you do not answer, I cannot answer; and which you may leave unanswered, to save yourself from criminal and civil responsibility, and this may involve me in a most unjust conviction, or unjust payment?"

Is not this the true feature of the transaction? will not you lordships believe now, that lord Melville was an indolent man about his own private concerns? It detracts nothing from the noble lord's character, or from the dignity of his mind that he is so. Who are they who have not their defects? But this not only proves his inattention to, and ignorance of his own affairs, but it proves more: it proves that he was particularly inattentive to the Chest account, that he was particularly inattentive to the items in the Chest account. Nay, it proves to demonstration, as much as if angels had come from heaven to swear it, that that item, to lord Melville's knowledge, never was in the Chest account; and your lordships have as good reason to believe that that Chest account (burnt by Mr. Trotter) had not that item in it, as you have reason to believe was in it. And as the presumptions of courts of justice, in trying criminal accusations, must be in favour of innocence, and consistent with probabilities, your lordships ought to believe that it was not in the Chest account, instead of believing that it was; or if it was there, that it was there totally unknown to lord Melville. For, to use the language of the learned manager, lord Melville could not be such a driveller, even with all his inattention to his own affairs, if that item had been pointed out to him, or if he had looked at it himself, after Mr. Trotter had retired, as not to have said, "good God, Mr. Trotter has taken all my stock from me, in security for the loyalty loan, and yet he makes me a debtor in the Chest account, for the sum of that loan, which never had any thing to do with the public service."

Now, my lords, consider this well; compare it with the testimony of 1789; there your lordships will find strong additional reasons for going along with the presumption that is contended for by us, against that contended for on the other side. Lord Melville had rejected Mr. Trotter's proffer of balances, to buy India stock in 1789: is it to be supposed that in 1797 lord Melville would have agreed, for this purpose, to have those sums of money placed to the Chest account, to contribute to a public subscription in 1797, when he had rejected a proposal of a similar sort in 1789?

Your lordships will observe, that from the year 1789, Mr. Trotter has sworn, in the most positive manner, that lord Melville never did at any time, under any circumstances, have any conversation with him, or he venture, ever afterwards, to state to lord Melville any thing respecting the purchase in the funds, or the application of public balances. On this part of the case therefore there cannot rest a doubt.

This brings me to the 7,000*l.* reduced annuities. It is but a word. How it can be brought into Mr. Kaye's computation I cannot understand. Mr. Trotter proves that it came from funds of lord Melville, and that he laid it out without his direction, because the reduced stock had been a productive fund before. "Did lord Melville ever say any thing to you subsequent to that time, of your having made that proposition from whence you collected a supposition on the part of his lordship that you were so using the public money?"—"Never."

My lords, it is in evidence before your lordships, that my lord Melville signed the accounts without reading them. It is in evidence before you, that he was extremely negligent with regard to his own affairs; and it is now I think, by observation, I may say in evidence, before your lordships, that lord Melville's negligence of his own affairs does not rest merely upon the testimony of Mr. Trotter, or any other witness; but is proved by the transactions themselves, I mean particularly by the transaction of his not having made any observation as to the state of the Chest account. But what I have to submit to your lordships gravely is this, that you are now in a criminal court, not in a civil cause; that whatever presumption may be just in a civil case, with regard to a person signing a deed which he has not read, or signing an account which he has not perused; whatever presumptions may be sufficient against him there, or however he may be bound by such an act in the civil transactions of life, I am sure your lordships will never apply that principle in a criminal case. On the contrary, if it is clearly in evidence before your lordships, that there was such negligence as prevented the party from knowing the contents of the paper he signed; such negligence as prevented the party from knowing what account was in the book or the papers delivered over to him, your lordships will exonerate him from criminal responsibility. In every case of a criminal nature, it is essential in order to establish criminality that you should prove the mind guilty. But where there is a complete ignorance and want of knowledge, as to the subject matter of the accusation, there cannot by possibility be an inference of guilt. And yet, my lords, Mr. Trotter in his evidence, page 155, being asked, "Do you consider the accounts having been so signed by lord Melville, as a proof of his lordship's approbation of the accounts, and the particular items therein contained, or as a proof of his lordship's confidence in you?" (he says) "It certainly was in the first instance, a proof of his lordship's confidence in me, as he must have known that I was subject to alter the accounts, in case he should have pointed out any error in them in future; but the public business in which his lordship was generally engaged, seldom or ever afforded him time to enter into any examination of the accounts, during the



time that I remained with him, after having presented them to his lordship."\* And your lordships will observe, that he signs them at the same moment; consequently that at the time Mr. Trotter was with him, it is clear he did not peruse them, but signed them upon Mr. Trotter's representation, giving confidence to Mr. Trotter; and when Mr. Trotter was gone, and the accounts signed, he could have no motive for examining them; and indeed, the whole evidence respecting the transactions I have been stating, shows that he could never have looked at them afterwards.

I stated, I believe, to your lordships, that 7,000*l.* three per cents reduced had been purchased by Mr. Trotter, without the authority of lord Melville, entirely of his own head; that the money had come from another quarter; that it was lord Melville's own money; and that he laid it out in a productive fund, because it had been before productive. I refer your lordships to the two pages in which this evidence appears, 131 and 132.†

Your lordships will observe, that in the year 1800, lord Melville quitted the office, and that his accounts were closed. My lords, although the learned manager who summed up this case, did not make any particular observation upon the transactions which took place at that time; and although there is every reason to suppose that he pointed to those parts only of the case, that were relied upon by the Commons, yet I think it necessary to trouble your lordships with a very few observations upon this head.

In the first place, your lordships will observe, by the evidence of Mr. Sprot, that the transaction of the final settlement was carried on entirely between Mr. Sprot and Mr. Robert Dundas. Your lordships, will observe likewise, that in page 159, Mr. Trotter being asked, "Did lord Melville express any surprise at the state of his account?" answers, "He did, he was very much surprised to find the balance was so much against him."‡ This relates to the state of the account current between Mr. Trotter and lord Melville. Your lordships will observe, that this account current between Mr. Trotter and lord Melville, though it had been delivered from time to time to lord Melville, never was finally closed, till the year 1800; that any balance that may appear afterwards between Mr. Trotter and lord Melville, arises from an account that must have been opened since 1800, because that account was then finally closed. Your lordships observe, with regard to the transactions in the payment of this money, that lord Melville immediately fell upon the means of paying up the money; but it is quite clear that lord Melville had apprehended from the situation in which he had placed all his funds, that Mr. Trotter had used these funds from time to time for the purpose of liquidating his accounts, and for the purpose of making a

final settlement; and therefore, the situation of the account at the end of the period, must have arisen from this circumstance clearly, that lord Melville was not aware that Mr. Trotter had not reduced the balance, and therefore was much surprised at the state of the balance at that time. Lord Melville, it is clear, was deceived in this respect; otherwise he would have given particular directions for the application of his private funds, for the payment of Mr. Trotter. But, your lordships will observe, that this was an account entirely between Mr. Trotter and lord Melville; that it was an account in which there never was any interest charged on either side; that it was an account in which sums were received by Mr. Trotter for lord Melville; that it was an account, in which the balance was sometimes in favour of Mr. Trotter, and sometimes in favour of lord Melville; that it was drawn from the mixed account; it was only by that means, that there was a possibility of a single sixpence of the public money ever coming to lord Melville, and if it came to him in that way, it must have come completely without his knowledge, as he did not know that such an account as the mixed account existed; and if duty had been done by lord Melville in order to have his affairs wound up in 1797, when he made the transfer of the stock, there would not have been any account to be settled in 1800; and therefore we have a right to have it considered as an account which was finally settled by lord Melville in the year 1797.

I have now to state to your lordships one or two other observations; and I trust, that with them I shall have done all that it is necessary for me to do in this case.

My lords, it has been a very great part of my anxiety, as far as is consistent with justice to the noble person who has entrusted me with the care of his case, not to occupy more of your lordships time than is necessary, and I think I may satisfy myself, I do most justice to my noble client, as far as I can do justice to any one, when I attempt to conclude my observations this day, and not trouble your lordships with sitting another day to hear me. One of the subjects requires but a word. Mr. Trotter's being a gratuitous agent of lord Melville, is made a matter of charge *per se*, and it is likewise made a charge, as matter of inference, to show that there was an understanding between them. Now, really it seems to me in the midst of a variety of charges which the honourable managers have opened, to be too small and minute a matter, to attempt to make any thing of this gratuitous agency. Is there any person who ever stood in the situation and relation with any body for whom they have an affection and regard as a public officer, who would not most voluntarily, cheerfully, and gratuitously do the duty of a private agent, especially such private agency as this, which consisted of a few entries in a book of accounts? It would

\* Page 973. † Page 935. ‡ Page 978.



have been disgraceful in Mr. Trotter, standing connected as he was with lord Melville, if he had not endeavoured to do every sort of private service to lord Melville, without making any demand whatever for it. The consciousness that Mr. Trotter was, without lord Melville's knowledge, amassing a very considerable fortune, certainly was a sufficient reason for him not to ask for any gratuity from lord Melville; but, does it therefore prove in the slightest degree, that because he did that gratuitous service, for that reason, lord Melville was in the knowledge of the manner in which he was acting, with respect to the public money? Every iota of testimony both written and parol, every part of Mr. Trotter's evidence is directly against such a conclusion, and there is not one fact or circumstance to prove any thing, but the direct negative of lord Melville's knowledge of Mr. Trotter's gains; there is nothing but insinuation, insinuation arising from his situation in the country, as to his knowledge of Mr. Trotter's improved circumstances, insinuations completely answered by that to which I have repeatedly referred, I mean Mr. Trotter's private connections, his family connections, and his various means of gaining money. Mr. Trotter likewise says, that he never was a private agent, that he never had any regular appointment.

My lords, it is said, that a criminal inference is to be drawn from the release, and from the destruction of papers. My learned friend entered very largely into that part of the case; he did it in such a manner, as to make it quite unnecessary for me to do more than make a single observation or two to your lordships. In the first place, with regard to that clause in the release, respecting the destruction of papers, it was clearly, if the act of either of them, the act of Mr. Trotter. But as far as Mr. Trotter's evidence goes, it was not the act of either. Mr. Trotter says, he had totally forgotten it till he saw it again, and that he gave no positive directions about it; and therefore he imagines it must have been inserted by Mr. Spottiswoode. Now Spottiswoode's character is in proof before your lordships; he was a person extremely well known to many of your lordships, and the inference is, that if he did it, it was done as a matter of course, without any intention to cover fraud. But, my lords, there takes place after the release, or at the time of the release, a destruction of papers. My lords, the destruction of papers mentioned by lord Melville in his letter to the commissioners of naval inquiry is at a perfectly different and antecedent time. There was no release in contemplation at that time; it might have been in Mr. Trotter's contemplation, but there never was a clause of this sort, or any release in lord Melville's contemplation, when he burnt his papers in Scotland in 1802. The question was asked of Mr. Trotter whether any directions were given by lord Melville, as to the form of that release, or any particular clause which it should con-

tain, and he says, "none whatever, to the best of my recollection." Your lordships, will observe too, that lord Melville signs upon the 18th of February in Scotland, in the neighbourhood of Edinburgh, Mr. Trotter signs in London, on the 23rd of February. There was no communication of the draft of the release to lord Melville; that is completely negatived. There was no communication of the draft; the only information lord Melville could have of the release, was by the engrossed copy, and that is signed on the 18th at Melville castle, and is sent immediately to London, and arrives in London in the course of the post, and there is no proof whatever (but the contrary is negatively proved) that lord Melville knew any thing of that release.

My lords, it is a strange mistake in this case, to suppose that this is a crime taken by itself; as if lord Melville in sorting his private papers, had destroyed public vouchers, or public accounts. There were no public accounts there; there were nothing but lord Melville's private affairs, which accumulated upon him in the course of business; there were no public papers among Mr. Trotter's, but there the destruction was Mr. Trotter's alone, lord Melville was totally ignorant of it; and we may even go further, Mr. Trotter was asked this question, "An account has been given of your having destroyed some books of account, was any one book of that sort, destroyed by any directions, or any previous communication of it to lord Melville?" to which the answer is, "None whatever."\* Lord Melville is therefore completely freed from all concern in this destruction. Then what inference is there to be drawn from this? it may possibly be fit in some cases, that where any thing like evidence is destroyed, and there is evidence behind, that the evidence of the destruction may serve to lead to inferences; but in this case, in which there is not any one thing that could arise from the papers, which were in the hands of lord Melville, nor any one thing that could arise from the papers, which were in the hands of Mr. Trotter that could disclose any thing to make the charge any thing more, than that which it has been made from the public books of the country; no inference is deducible from the destruction of the papers. Here the charge is made; it is for lord Melville to get rid of that charge. I have stated the argument, ground, and fact, upon which we contend lord Melville is to get rid of that charge; and above all, there is not to be fastened upon him, an inference of guilt from the insertion of a clause in the instrument,—which instrument he never saw, till the clause was inserted in it,—for destroying papers, which papers he never destroyed, and the knowledge of the destruction of which by lord Melville, is negatived by the witness who destroyed them.



My lords, there is one other observation to be made, with respect to the destruction of these papers, and that is an inference that is referable to a great part of the history of this most extraordinary cause. I have had occasion to state to your lordships frequently in the course of my address to you, that Mr. Trotter, at the commencement of his account of this business did not speak out; that, owing to Mr. Trotter sheltering himself under the protection which the law and the act gave him, did not think it wise to disclose any thing which should discover either his delinquency, or his profits. It is owing to that. I may say, that your lordships are here; for from the moment, I can venture to say, that Mr. Trotter did disclose to this noble and most elevated Court, the real nature of the transactions between him and lord Melville, all idea of corruption on the part of lord Melville vanished, and was dispersed. But I submit to your lordships, that the same caution which dictated Mr. Trotter's silence, dictated likewise the destruction of his papers; he was determined to be silent, that his gains might not be discovered, that his delinquency might not be proved; and he was determined to destroy his papers, that they might not be discovered from that quarter; here then, is a direct motive on the part of Mr. Trotter for the destruction of his papers; and when I can show your lordships a direct motive on the part of any person for the act he does which is consistent with reason, and with the general nature of the case and the transaction, your lordships will not resort to a strained inference. Your lordships will be satisfied, that all Mr. Trotter's taciturnity would have availed him nothing, if the commissioners of naval inquiry, or the public prosecutor, had laid their hands upon the papers; and, therefore, here was a direct motive upon the part of Mr. Trotter to destroy those papers, which might have rendered his silence totally and completely abortive. Until this case took its progress before the House of Commons, and long after, Mr. Trotter acted uniformly upon the idea of protecting himself, either from criminal accusation or from civil suit, by maintaining absolute silence as to all the facts that could by possibility disclose either guilt or gain.

My lords, this seems to me to wind up all the observations that are necessary to be made upon the case which I have been intrusted to state to your lordships. I will not trespass any farther on your time than to beg your lordships to except my most sincere thanks for that attention with which you have honoured me. My lords, I am perfectly sure that you will not, when you examine this evidence; when you consider the case of the noble person accused, the liberality of his conduct, the disinterestedness of his character, vouched by the very persons who accuse him; when you consider that there is no disposition to avarice in his nature; when you con-

sider that the whole tenor of his life is adverse to such a crime as he is here charged with; when your lordships consider that all the facts and circumstances which the prosecutors have narrated, either those which are more ancient, or those which are less ancient, are not sufficiently sustained by the evidence, or that they are sufficiently refuted by observation and argument; when your lordships consider, above all, that the facts which are proved by the principal witness, are perfectly consistent with the presumptions which we have suggested, and that all the presumptions to the contrary are forced and strained; when your lordships consider all these things, and come to deliver your judgment of Guilty or Not Guilty, upon your honours, your lordships will not conceive, that under the first authority by which lord Melville acted—the warrant—he has committed any crime. My lords, that warrant lays him under a civil obligation: that warrant was stated to your lordships by my learned friend, in a manner in which, I am sure, I should do but ill at this time of day to attempt to follow him. I refer your lordships to that argument; but, my lords, I contend that the fact is more important to the noble defendant than any argument upon the legal effect of the warrant. I contend that the noble lord is not proved corruptly, intentionally, or indeed at all, to have taken one single sixpence of the public money; and that that being the case, it is unnecessary to reason upon the operation of the warrant. I am sure that your lordships must be satisfied, from the clear manner in which my lord Melville, when Mr. Trotter's mouth was opened, was freed from all imputation of moral guilt—was freed from all connexion with corruption—was freed from all desire of making money—that he was from that instant freed from all political crime. It would be a terrible thing if the hearts of the court were to be at variance with its records. My lords, this cannot be, because, I trust, that the argument upon the statute renders my lord Melville as free from legal crime as the arguments upon the facts; and the facts themselves show him to be perfectly free from, and always incapable of such a crime.

My lords, as I stated to your lordships before, it is the *mens rea*, you are to consider. Lord Melville's situation is most extremely singular in this country;—renowned for the wisdom of its laws, and particularly for the humane policy of its criminal code, the first and ruling principle in that code has been reversed in his case. My lords, the law says, that no person shall be held to be guilty till he shall be convicted on a trial by his peers; and that every person till found guilty shall be presumed innocent. The noble defendant stands in a situation directly the reverse; although he is only now upon his trial, he has already been found guilty, and he has been already punished.

The cause of this unprecedented situation I



have endeavoured to explain to your lordships. I have endeavoured to show you, that the honourable silence of lord Melville, dictated by his sense of public duty, and his sense of personal delicacy, and the silence of Mr. Trotter, dictated by the motives which I have detailed, left the country in ignorance till this cause came to your lordships' bar.

My lords, the case is now explained: you cannot relieve this noble person from the misery he has suffered in the interval; he has borne it with the fortitude of a philosopher, and the patience of a Christian, supported by the feeling of conscious innocence, in the full confidence that a judgment of acquittal by his peers, will restore him to his family, his friends, his country, and his sovereign.

Adjourned to the Chamber of Parliament.

FOURTEENTH DAY.

Friday, May 16th, 1806.

The lords and others came from the Chamber of Parliament into Westminster-hall, in the same order as on the first day of the trial.

*Lord Chancellor.*—Gentlemen, managers for the Commons, you may now proceed to reply; and the lords will be pleased to give their attention.

*Mr. Attorney General [Sir Arthur Pigott].*—My lords, I hope that the duty which I have to perform, will not add considerably to your lordships' trouble, or much retard the termination of this most important proceeding. It has been the object of the managers for the House of Commons, animated by the exemplary attention, diligence, and perseverance of your lordships, in all respects so to conduct the prosecution intrusted to their charge, as to attain the ends of justice in the most speedy manner. I had, my lords, until a very recent stage of this proceeding, hoped that it would have been quite unnecessary for your lordships to have heard any voice from this place, except those which have already addressed you. The manner in which my honourable friend opened this impeachment to your lordships, left nothing unperformed. He, my lords, who has had the largest share, by far, in conducting this most important business to its present stage, discharged the duty committed to him, in a manner which has conferred a lasting obligation upon the country, an obligation which, I trust, will never be forgotten.

My lords, after he had concluded that opening, it would at least have been a superfluous task for any manager of the House of Commons to have attempted to add any thing to it. My learned friend, who undertook to sum up and state to your lordships the effects of the evidence adduced, in the observations which he submitted to your lordships upon it, stated every thing that could be urged on that head; and the managers, exercising their best judgment, thought it unnecessary to occupy more of your lordships' time upon the subject.

My lords, if the defence of the noble lord had been conducted by an attempt merely to weaken the effect of that evidence; and if the learned counsel of the noble lord had merely presented to your lordships, what they, on his part conceived to be the result of it; I think, my lords, that the managers might have persevered in the line of conduct they had adopted, and have left the whole of the reply to my honourable friend, who is so fully possessed of the facts of the case.

But, my lords, the defence has assumed another aspect. The managers for the House of Commons have had the mortification of hearing principles laid down, upon the establishment of which, the learned counsel who conduct this defence on the part of the noble defendant hope to obtain his acquittal from your lordships; principles which, in my humble apprehension, are not only unfounded in law, but are so perilous to the public, that it is the duty of the House of Commons, charged as they are with the care of every thing that relates to the expenditure of the public money, to have those principles sifted, examined, and minutely investigated, before they are allowed to obtain the august sanction of your lordships, and are consecrated as judicial principles by this House, the highest and last court of judicature in the kingdom; whose example must be copied by every inferior court of justice, and who, when they are applying laws to the case of the noble lord now upon his trial, must do the same for every commissary, for every contractor, for every deputy-paymaster, for every person concerned in the expenditure of the public money, in all the various parts not only of this empire, but in all the remote parts of the world, where we either exercise dominion, wage war, or carry on commerce. When your lordships are called upon to sanctify the principles on which the acquittal of the noble defendant has been asked at your lordships' hands, you have been asked to lay down principles of great public danger, and so destructive of the due care of the money granted to his majesty for the security of his subjects, and the safety of the state, that it is necessary indeed that those principles should undergo a very deliberate examination before they receive the sanction of your lordships judgment. If at last, my lords, the Commons should be compelled to retire from your lordships' bar, corrected by the learned counsel for the noble lord, and the judgment of this Court, in all that the history and constitution of the country have taught them; they will retire mortified and confounded: It will be the first time, my lords, that they will have been taught this perilous lesson to the public; that in the execution of a public office, of great trust and high confidence, charged with the distribution of the money granted by the Commons to his majesty, for the safety and security of his subjects, no public obligation lies upon the officer; and that he is in the same situation as if he had broken a contract



entered into with a private individual, for the infraction of which, civil remedies only could be applied. My lords, we must read anew; we must begin to learn again, before we can submit to such extraordinary, I should, if my respect for those learned gentlemen did not deter me from doing so, have said such extravagant and preposterous doctrines. It is not only contended that the public officer has no public obligation upon him, no public duty to perform, an infraction and breach of which is the subject of a criminal proceeding; but it has been for hours attempted to argue your lordships into an exposition of an act of parliament, which would make a remedial law for preventing an ascertained grievance, acknowledged by the whole legislature of no more value than waste paper, and would render the exertion of the legislature ridiculous, and a perfect mockery.

My lords, these are the two subjects to which I mean principally to confine myself: and I mean to leave in general the facts of this case in those hands which are the best, because they are the hands of him who is best acquainted with them: touching the facts of the case only incidentally, as it shall be necessary to illustrate what I shall have the honour of submitting to your lordships; and only for the purpose of rendering more clear and perspicuous, what I shall take the liberty of stating.

My lords, it would indeed be a melancholy consideration, if the doctrine which we have heard could really be sustained. If, my lords, the people of this country, burthened as they necessarily are for the defence of all that is dear to them, are at this day to discover, that there is no real security for the expenditure of the public money, and that the public accountants, to whom it is issued for peculiar, prescribed and appropriated purposes, have it in their power to divert it to other purposes; either to their own emolument, or to the enrichment of others; with what feelings, my lords, can the public be expected to bear those burthens? My lords, it is because the contrary is the settled law of the country; it is because it has ever been the anxious desire of parliament, when such abuses have been fairly exhibited to their view, to adopt measures, not only to check, but effectually to prevent them; that the public have that well justified confidence in the legislature which induces them to bear so patiently all the burthens that are imposed upon them.

My lords, in the expenditure, as well as in the receipt, of the public money, a great variety of persons are employed. All the public money which is collected from the subjects of this country by the various branches of the revenue—by the excise, by the customs, by the post-office—is paid out through the channel of the public offices. The money issued for the maintenance of the army, for the support of the navy, all proceeds out of the Exchequer; and, in some measure, is placed un-

der the control of great public accountants; by whom it is occasionally dealt out to persons employed under, and subordinate to, them, for the various purposes of those services. And, my lords, let it be recollected, that there is no part of the world in which the British flag is displayed, and the enterprising, ardent, and intrepid mariner employed; there is no part of the world in which the brave, patient, and heroic soldier exposes himself in the service of his country, in which it is not necessary to employ persons who have a distribution of part of this public money levied from the people: and if it is to be understood that all those persons who distribute the public money, where the soldier is to be paid—where the mariner is to be sustained—where necessities for the troops, and for the navy are to be provided—are under no public obligation, and have no public duty imposed upon them, which can be vindicated by a criminal prosecution, your lordships will see it is high time, at least, that this subject should be looked to, and that if this be really the law of the land, it should no longer remain so; for I am at a loss to conceive upon what principle any public officer of the crown is to prosecute any deputy-paymaster for his acts; I am at a loss to perceive upon what principle any commissary, or any contractor is to be prosecuted, or has been prosecuted (as they have been), if the law which my learned friends have laid down can be sustained.

My lords, I certainly shall not follow the example of the learned counsel, in tracing the law of this country from the debates in the House of Commons; I shall not quote the debates in parliament, or consider what Mr. Rigby thought was the law of the land; nor shall I presume to lay before your lordships the opinion of any member of parliament, whatever his parliamentary authority might be, upon a subject of this description.

In the year 1780, a parliamentary committee was appointed, to inquire into the state and expenditure of the public money; why the money did not reach the Exchequer, as it ought to have done; why the money was taken out sooner, and in larger sums, than it ought to have been; and why, when the purposes were answered for which it was issued, the surplus did not find its way back into the Exchequer. Persons were employed for seven long years in this inquiry; they presented various reports to his majesty, and to both Houses of parliament; and various measures were adopted in order to carry into execution the regulations recommended in these reports.

My lords, it was not the object of those commissioners to attack persons who might be truly regarded as perfectly innocent. In a long course of time, the custom had gradually grown up, of using a part of the public money in the possession of the accountants, for their private emolument. It was perfectly well known to those who administered the govern-



ment; was connived at by them; and the commissioners, if they are to be dignified with the name of reformers, aimed at no reform that was not prospective. They did not aim at the ruin of any ancient family, whose possession of those offices had long ceased to exist: that was not the way in which they began to execute the purpose of the legislature. They did not, my lords, indulge any man's prejudice; but they honestly and firmly took the measures which they thought would be proper to point out to the legislature the existence of these abuses; and having done that, they took the liberty of suggesting such regulations as had occurred to them, in order to prevent in future the possibility of the recurrence of such mischiefs.

My lords, the act of parliament in question having stated these reports as the foundation of the measures adopted by the legislature, the managers thought it right to lay before your lordships, very shortly, what was the nature of those regulations suggested by them; and it renders it quite impossible to doubt, or contend against, this proposition, that what has been done upon the present occasion, and is proved, beyond the possibility of denial, to have been done and permitted by the noble lord, the defendant in this cause, is directly against the principal object recommended by the commissioners; against the object for which they transmitted those regulations to the legislature, which were afterwards formed into an act of parliament. It was for carrying the money to the Bank,—not in the way my friends have contended it was alone intended by this act, namely, that the moment it got into the Bank it should find its way out again, for the private advantage of any person whatever: my lords, it is a mockery of these proceedings to address any set of men with any such contention, any such controversy, as that in which the learned gentlemen concerned for the defendant have engaged;—it was for a directly contrary purpose, for the very purpose of destroying all subordinate treasuries for partial and limited purposes. And to state, after what is proved in the 129th page of that day's proceedings,\* which contains Mr. Trotter's evidence, that for convenience, that to avoid sending back to the Bank of England, the noble defendant was authorized to grant that application of Mr. Trotter to take the money from the Bank which had once got there, in pursuance of the act of parliament, and deposit it at Messieurs Coutts's for convenience;—what is this but repealing the act of parliament?

If, my lords, Mr. Trotter in his superior wisdom and experience, thought it became him to set himself above the wisdom of those who have attended to this subject; above the legislature, who had been pleased to adopt and sanctify that wisdom, in repeated

acts of parliament; it was his business to have stated that to the legislature, and to have procured a repeal of the act, or so much of it as was necessary to give effect to what he wanted to be done.

Alas! alas! my lords; these are miserable, pitiful pretences of sordid interest, framed to accomplish that which is too obvious to escape any human intelligence; and I should be sorry indeed to converse with a man, who could be imposed upon by arguments which have been addressed to your lordships in justification of the practice which has obtained, in order to palliate the violation of this act of parliament.

My lords, I was about to state to your lordships three passages from those reports; first remarking, that in the act in question, as well as in two prior acts made *in pari materia*, for the reformation of the Pay office of his majesty's forces, these reports of the commissioners of accounts are referred to; and the preamble of the act now before your lordships states, that "Whereas it appears by the reports made by the commissioners appointed to examine, take, and state the public accounts of the kingdom, that regulations are necessary for better conducting the business in the department of the treasurer of his majesty's navy." I cannot, my lords, therefore, I presume, proceed to any better source for discovering what regulations were necessary, and what grievances were to be redressed, than those reports.

My lords, this is a remedial law, and all courts of justice construe such laws so as to suppress the mischief and advance the remedy; and it is therefore extremely material to be well and accurately apprized of what was the mischief intended to be cured by this law.

My lords, there are three reports which apply to the subject; they are made at considerable distances of time from each other. The earliest of them is made the 3rd of March, 1781, and after stating the defects in the treasurer of the navy's office, the commissioners took that which, as I believe, is the safest and most prudent course to be taken upon all such occasions, they speak with some diffidence as to what they recommend: They state, in these reports, that these defects should be speedily corrected; "To alter the constitution of the office; to abolish the subordinate treasury; to render the treasurer a mere accountant, and to vary the mode of accounting, carry with them a strong appearance of an effectual remedy." Still they do not now, in March 1781, which was four years before this act, they do not even now venture to recommend that measure; they pause upon it, they hesitate, and they state to parliament; "But were we, in the present state of our inquiries, to come to decisions of such moment, we should be premature, perhaps rash; it is easier to see the defects than to supply the regulations.

\* Page 937.



The pay of the navy is an important object, and any alteration in the mode should be well weighed before it is adopted; it should be traced through all its effects, and perfectly ascertained to be as feasible in practice as it is specious in theory."

My lords, I quote this report merely to introduce the eighth report, which was made in December 1782, one year and nine months after it. This eighth report does recommend that alteration in the constitution of this office; it does recommend the destruction of the subordinate treasury; it does recommend, my lords, the avoiding of every thing that has been insisted upon here; it states the fact of those assigned bills (assigned upon the treasurer of the navy) which, in the early parts of these reports, the commissioners of accounts had stated were not always brought for payment to the treasurer of the navy upon whom they were drawn, as soon as they were assigned, but who was charged with them by the boards that assigned them upon him. When further examination had taken place, the office of the paymaster of the forces had, in the interval, been reported upon twice; and regulations entirely to alter the constitution of that office, in the very respect in question, had been recommended by the commissioners, and adopted by the legislature. Your lordships will find it stated in the eighth report; "The examination we have recently made, has enabled us to form an opinion upon another point of moment to the public; the legislature have in the last session of parliament introduced into the office of paymaster-general of the forces, a regulation which, as it seems to us, may be applied as beneficially to the office of the treasurer of the navy." Your lordships see they take the recommendation with respect to the Navy-pay-office; and there is the adoption by the legislature of that regulation, and the conversion of it into an act of parliament.

Now what, my lords, is that regulation? The custody of the cash. Not the custody of the cash here or there; not the custody of the cash westward of Temple Bar, and not eastward of Temple Bar; no such ridiculous project entered into the heads of those who recommended this measure to the legislature. Little could they foresee that the time would arrive when it should be gravely argued, that this was the construction of the act; that all that was done was to place a guard to conduct the money from the steps of the Exchequer to the Bank; that instead of sending a waggon and soldiers to carry it safe, they would send a Bank clerk and an act of parliament; and having done that, the act was *functus officio*; there was nothing further to be done; that how long the money remained there, or to what purposes it was applied, signified nothing. My lords, this is a pretext too flimsy to impose upon any understanding—that it matters not what became

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of it when it got out; in whose custody it was; for whose benefit and emolument it was employed; little did the legislature foresee, when they were taking these measures, that the day would arrive when this would be contended. O unwise legislature! O improvident parliament! What, was this all your care and caution? did you mean to do no more? Or, meaning to do more, were you so incapable of carrying your intention into execution, that all you did was to see that in carrying the money from the Exchequer, it was not purloined in the way to the Bank; but that the moment it got into the Bank, it was no longer the object of your care? that if the treasurer would insert in his draft, that he drew for naval services, he might, while the leaf in the account book in which it was entered was wet, draw it all away under the pretence of convenience?

My lords, I contend that the custody of the cash applicable to naval service was transferred from the Treasury to the Bank of England; but that the account of the receipts and payments was to be kept at the treasurer's office.

My lords, I beseech your lordships' attention to the continuation of this passage; "all the sums received by him may be received by the Bank; sums from the Exchequer may be imprested to the Bank; sums directed by different boards to be paid to him, may be paid to the Bank." Now here is an important article, that has furnished that pretence of convenience in argument, but not in evidence; for there is no evidence before your lordships to prove that the sums which Mr. Trotter applied to lord Melville to have leave to draw from the Bank, were confined to assigned bills. "All those bills assigned upon him for payment." Now these are the very bills in question. "All bills assigned upon him for payment may be paid, and all extra payments may be made, by his draft upon the Bank" The commissioners, a year and three quarters before, had stated all that history of assigned bills; but when they had examined further, the commissioners were of opinion that assigned bills might just as well be paid by drafts upon the Bank, as any other part of the service; and why not? To say to a man of sense, that the Bank is not as convenient a place to pay as Mr. Coutts's shop, is perfectly trifling. These assigned bills are generally for large sums, very few under 500*l.* they are generally larger; so that the pretence of having money a little nearer in order to pay them with more facility, is not sustained by evidence.

It was the object of the legislature that the assigned bills also should be paid by the clerks at the Bank. There are payments, unquestionably, for which some money must be kept at the Pay-office. Your lordships have heard that small payments are made—twenty shillings, ten shillings, five shillings; and who would think of giving a poor woman,



who was coming for her husband's money, a draft to trudge to the Bank to receive twentyshillings? Be it so. If the noble lord had proved that in all the instances in which he allowed money to be taken from the Bank, and carried to the iron chest, or to Somerset House, or even to Messieurs Coutts's, it had been for that purpose only; he would have made a case within the exception, which your lordships will find stated by these commissioners. It could not be predicated of money drawn either by the noble lord himself, or by his deputy acting under his letter of attorney, that it was not drawn for navy services; any more than if it had been an assigned bill upon him which had gone for payment, and his paymaster had given a draft upon the Bank of England, it could have been predicated, that that bill was mere form, and that it was not drawn for navy services.

Your lordships will find the whole of this passage having this uniform object: to prevent—except only in the case of having money to pay the seamen at the out-ports, and to make the small payments,—the drawing the money from the Bank: these are the only excepted cases.

Therefore, if the policy of an act of parliament was ever clear beyond a possibility of doubt; if there ever was an act concerning which no cavil could be raised as to its real object, it is this: it was to prevent the treasurer of the navy, or any officer under him, having the custody of the cash; it was to direct that no money should go out of the Bank, except for those special purposes; and when your lordships come to see the means taken by the legislature to carry this into execution, you will see that that end was attempted to be attained; and, I think, is attained by a true and genuine construction of this act, such as a court of justice would put upon it; that is, such as will tend to suppress the mischief, and advance the remedy.

My lords, before I proceed to consider the act of parliament, I must take the liberty of considering first the preliminary question, which my two learned friends stated, one after the other. My learned friend, Mr. Plumer, conceives, that before this act of parliament, there could be no public offence.

My lords, it is, in my apprehension, superfluous to consider what was the state of the subject, previous to the warrant, upon the appointment of colonel Barré, which preceded the appointment of the noble lord, in August 1782. The noble person\* since deceased who was attorney-general at that time, who, as my learned friend, Mr. Plumer, stated, proposed resolutions to the House of Commons, I know, had in contemplation some other measures, which might have produced a decree of a court of equity: Mr. Rigby's authority, I know, was against it, and I know

there were other high and respectable parliamentary authorities against it; but the subject passed by. I believe almost every man felt, that there was no call for a retrospect at a time, when for so long a course of years the practice of using the public money had prevailed; when the high and respectable persons in the state who held those offices, really had not a remuneration that would induce persons of their consideration to take such offices. Some of the persons had long been dead, who had held those offices, and had been in possession of this money. Their representatives were children of tender years; it was an evil common both to those who had been ministers, and to those who were ministers. Lord North had been a joint paymaster of the forces, and so had Charles Townsend. There were exceptions, though few and rare; yet almost all of them had, either by their permission to those who had acted for them, or by connivance at their acts, made use of the public money; and accordingly it was passed over. But the government, concurring with the House of Commons, stopped the practice from that period.

Now, my lords, let us mark what were the measures taken for that purpose by the House of Commons, whose resolutions, we are told, are nothing. Be it so. If it became my friends so to express themselves of a resolution of the House of Commons upon such a subject I pass it over. The authority of the House of Commons will be little impugned by the representations of these gentlemen. The House of Commons resolved, that the paymaster of the forces, or treasurer of the navy, ought not thereafter to use the public money for private advantage. And, my lords, our gracious sovereign concurring with the object of the House of Commons, took measures, on his part, to give effect to their resolution, by granting an emolument adequate to the nature of those offices; not, my lords, proportionate to any labour, for of that there was none; but proportionate to the rank and importance of the person who might be expected to hold them. An increase of emolument to 4,000*l.* per annum was given to colonel Barré, who preceded the noble lord in this office. It was found in August, 1782, when the noble lord came into that office, that his majesty's intentions had not been completely accomplished; and a fresh measure was taken, to make up the sum of 4,000*l.* clear to the noble lord.

My lords, look back to the warrant. The warrant states it to be granted to him, in lieu of all fees, wages, and emoluments whatever. Why, my lords, was this not granted to take away all pretext for deriving any emolument from the public money? for applying it to any other use, than that for which the taxes are imposed upon the people and the money taken from them? Did that warrant prescribe to the noble lord a public duty? I should like to hear any man in England an-

\* Lord Kenyon.



swer,—“No; that warrant prescribed no course of public duty to a public officer.” My lords, was the noble lord his majesty’s officer or not? If he was his majesty’s officer, was it competent to his majesty to prescribe this course of duty to him? Had his majesty a right to appoint, by patent, the noble lord to this office, and give him, at the same time, an increased emolument, as a consideration for all emoluments, except that liberal salary of 4,000*l.* a-year, which it was his majesty’s pleasure to grant him? And was it not competent for his majesty to prescribe to him, that he should not henceforth have any farther emolument from that office?

Then those who argue that this did nothing, must state to your lordships, that there was something about this office of some peculiar nature which freed the person from all public obligation; that there was something about it which withdrew him from his majesty’s authority, from that authority from which he derived his appointment, that there was something about this office that rendered it competent for his majesty to increase the emoluments of it, but not competent for his majesty to prescribe a course of conduct to be followed by his servant.

My lords, can such a proposition be maintained? I have heard it asserted that there was no law binding upon him; but I contend, that the duty of every officer appointed by the king is a public duty, which the law will vindicate by criminal proceedings: and that the relation subsisting between him and the king consists in the difference between the situation of his majesty and another individual. If we talk of the relations between individuals as applicable to the case, and as creating the only obligations which arise out of it, we must renounce the whole history of the criminal law.

If those gentlemen had contented themselves with addressing to your lordships observations upon the facts, it had been one thing; but principles of jurisprudence are of great moment at all times—it is of the utmost importance to consider them well—that which is to be made law for the noble lord, that which is to be made law for any splendid or titled public accountant, is to be law for any clerk in the Exchequer; and to state of any public officer created by patent, that he had no public duty which could be vindicated by a prosecution; that no indictment, no information could be filed against him by the law officers of the Crown;—is a proposition which I apprehend to be utterly untenable, and which has not been supported by any argument.

My lords, between individuals, unquestionably, contracts can only be vindicated by civil remedies: an individual can only have his action upon the case, if the agreement is not under seal; he can only have a civil remedy resulting out of the contract: but it is a proposition scarcely to be addressed with de-

cency to your lordships, that this public officer stood in no other relation to his majesty, than my servant stands to me. If I sent the one for any purpose with money in his hand, and he misapplied that money, under circumstances that did not bring him under a recent act, all that I could do would be to bring an action for my money; and so, be it recollected, his majesty may at any time file a bill in the Exchequer, to recover money or the profits of it, whilst in the hands of a public accountant; but, my lords, there is not a book on the criminal law which does not state, that the moment a public duty is cast upon a man, though it be a new duty created by act of parliament, if there is not a special remedy provided by the act of parliament, that man is responsible by the common law proceedings in respect of his duty. Then what are the exceptions to it? and above all, can the treasurer of the navy be stated as an exception to it?

My lords, what must become of the authority of the case of Mr. Bembridge, which grew out of the proceedings of the commissioners of accounts? Not only one of the noble lords who lately presided in the court of chancery, and in your lordships’ house, was his counsel, but the noble lord who now presides in this House was also his counsel: he had the best assistance, therefore, among whatever was rising to eminence in the profession; he had also the assistance of Mr. Bearcroft, who was afterwards appointed to a considerable judicial situation, chief justice of Chester.

But, my lords, what was Bembridge’s case?—He was an accountant in the Pay-office; Mr. Powell, his predecessor in that same department, had made up accounts. The noble employer of Powell had been dead from the year 1774, and the head and representative of that family was then an infant, but is now an ornament of your lordships’ house. Mr. Powell was executor of lord Holland, and he was charged with the task of making up his accounts, of which all the existing members of his family were as ignorant as I am. Mr. Powell omitted in those accounts a sum of 48,000*l.*—But that was Mr. Powell’s act. Mr. Bembridge succeeded Mr. Powell, and though he had not made up the accounts he knew of the omission, and concealed it. That, my lords, was the whole head and front of his offence—he did no more. Mr. Powell ceased to exist before a prosecution could be commenced against him, or at least before it could make any progress. Mr. Bembridge lived to his trial, and your lordships will find, that all that could be contended for, was contended for in the case of Mr. Bembridge.

My lords, I will take the liberty of stating this case:—It occurred at an interval when there is no printed report of the decisions of the Court of King’s Bench; it occurred after Mr. Douglas ceased to report, and before the commencement of the labours of Mr. Durnford and Mr. East; but there are several very



correct manuscript reports of the case.\* I shall content myself with stating what the noble lord† who then presided, as he had done for thirty years, over the criminal administration of justice in this country, and over a great part of the civil administration of justice in this country, said, after the long and repeated arguments of two of your lordships,‡ as counsel for Mr. Bembridge, not only in a great variety of forms, but on a great variety of topics, on a motion in arrest of judgment. These words are all which I shall take the liberty of stating to your lordships, because I think they contain all the principles which embrace the present case: "As to the motion in arrest of judgment the objection is, that at most it amounts to a breach of trust, a concealment, a fraud of a pecuniary nature—not indictable. It is a mere general injury, and that as for a public offence and a criminal proceeding there is no precedent."

Well worthy of attention, indeed, are the words of the learned lord;—"The law does not consist in particular instances, but in principles: two are clearly applicable—first, that if a man accepts an office of trust and confidence, concerning the public, especially when it is attended with profit, he is amenable to the king for the faithful discharge of it, and his majesty can call upon him by way of indictment. There are many officers not appointed immediately by the Crown: the custos brevium of this court is appointed by the chief justice. In Vidian there is an information for so neglectfully keeping the records of the court, that one of them was lost. This was a duty concerning the public, though he was not appointed by the king. Another principle is, where there is a breach of trust, a fraud or imposition, which, as between subject and subject, would only be liable to an action, it is indictable in the case of the Crown. There are some authorities, one as long ago as king Edward the 3rd; it was taken to be clear that an indictment would lie for the concealment of a pecuniary duty from the king." Lord Mansfield then states 27 Assize, and 1st Rolle's Report: and Mr. Serjeant Hawkins's Pleas for the Crown, cap. 25, sect. 4, he says—"Indictment does not lie for private injuries, unless they concern the king." He then cites 6 Modern 96, and concludes, "I am of opinion this crime is an indictable offence." Mr. Justice Willes and Mr. Justice Buller were of the same opinion; and Mr. Bembridge was sentenced to imprisonment for six calendar months, and to pay a fine of 2,650*l*. My lords, I have another

\* The report of Bembridge's case, inserted in the first volume of this continuation, was taken from a manuscript in the office of the solicitor to the board of Treasury. The judgment of lord Mansfield will be found in p. 150 of that volume.

† Lord Mansfield.

‡ Lord Eldon and lord Erskine.

manuscript report of the same case, and I believe your lordships will find the correctness of the first justified by the second, and that of the second vouched by the first.

"It is said," said lord Mansfield, "this is a mere civil injury, a fraud, a breach of trust, and not indictable, and that there is no precedent of such an offence being indicted. The law, though explained by particular instances, does not consist in them, but in principles, which govern particular cases as they arise. There are two principles which apply to the present case—first, that where any person accepts of an office of trust and confidence respecting the public, especially when it is attended with profit, he is amenable to the king; and this can only be criminally, by whomsoever or howsoever that officer is appointed, whether appointed by his majesty or appointed by any other authority. There are many offices respecting the public which are not given by the king; for example, the masters in chancery." And then he cites the same cases which are stated in the manuscript report I have already stated.

"Secondly," he says, "there is another principle: any breach of trust, fraud or imposition, respecting the king and the public, which, between subject and subject, would only be actionable, if it concerns the public is indictable; *there are some authorities for this, though the principle is sufficient, and it is essential to the existence of the country.*"

This principle, my lords, this venerable judicial magistrate, with all the experience he possessed, thus expresses himself to be necessary to the existence of the country; as if with a prophetic spirit he had foreseen what is passing before you; as if he had heard the doctrines that were uttered yesterday, when it was contended that there is no such principle—that this public officer, this treasurer of the navy, entrusted with the distribution and administration of public money, has no public duty which his majesty can vindicate—that he can commit no violation of that duty of which his majesty can go into any court to complain; but that he is subject only to the same remedies as if he were dealing in a matter of private concern with a private individual.

My lords, it will not be immaterial to conclude lord Mansfield's judgment. He says—"In the time of Edward the 3rd, it is clear that an indictment lay for an omission or concealment of a pecuniary duty to the king: 27 Assize, placito 17. Had that been between subject and subject, it would not have been indictable." Then he states, "In 1 Rolle's Reports, 2:—Lord Coke says, *if a man collect any thing pro bono publico, and do not employ it accordingly, he may be indicted.* In 2 Hawkins 25, sect. 4, the distinction between private and public injuries is clearly taken; in 6 Modern 96, it is said, any public officer is indictable for misbehaviour in his office; and there is no doubt that he is a public



officer who has so much power over the public revenues."

Now, my lords, what was Mr. Bembridge's power over the public revenues compared with that of the noble lord? But if this be law, that the concealment of a pecuniary duty belonging to the king is a misdemeanor, and cognizable by criminal proceedings in the king's courts, what is the case of the noble lord? Has he concealed nothing? Has he permitted nothing to be done, my lords? There stand two confessions of the noble lord: one a spontaneous one, not only not sued for from him, but voluntarily tendered by him; not in the course of any inquiry, but which he chose deliberately to make.

My lords, my learned friend argued upon that, by asking your lordships if you would punish silence?—Punish silence!—Is it silence when a man says, I took ten thousand pounds of the public money, issued for naval services, and applied it to other public purposes, or applied it to private purposes? Is that what my learned friend, Mr. Plumer, understands by silence? If that be not speaking, what is it to speak? But, my lords, it does not stop there; for this silence continues with a defiance of all the public authorities of the kingdom, with a declaration that he would not disclose it; that his private honour or public duty, and other considerations which he states, induce him not to disclose it. This is Mr. Plumer's silence. My lords, this is confession. My lords, the noble lord, in his other confession, states distinctly that he knew, and understood, Mr. Trotter was employing the public money for his private advantage; for he is asked if he gave him authority. No: he gave him no authority. No, my lords, he did not give him a letter of attorney so to employ it, or a verbal authority so to employ it: but where is the difference, in a public officer's having a subordinate under him, knowing and understanding that that officer is using the public money for his own private emolument, and his giving him an express authority for doing it?

My lords, I should, be very glad if I had an opportunity of hearing what those venerable judicial magistrates, who are presiding in courts whose inquiries are of another kind, would say about the distinction, between the permitting a subordinate to do an act, and giving him authority to do it.

My lords, this, it appears to me, accounts for the resources to which the learned gentlemen were driven: they were oppressed and overpowered by the evidence; and to that only I can ascribe their having recourse to such strange and singular doctrines as they have resorted to in the year 1806, in order to contend, not only for that principle which is to absolve the noble lord, and to make him not accountable for the violation of that duty previous to the act of parliament, but also, my lords, to reduce the act of parliament itself to dust and ashes.

My lords, since the case of Bembridge, the case of the King v. Munton\* has occurred. That was a case which would have created nothing but a civil remedy, as between individual and individual; but your lordships know (and the noble lord who presides, I believe, gave the benefit of his assistance to that defendant) what occurred in the case of the King v. Munton, and what was the nature of his offence and the fraud he committed. What are the circumstances which now press upon the public for consideration, and demand inquiry? Can any of those persons intrusted with the expenditure of the public money, for the purpose of providing for the wants of the army and navy, if they turn this power to their own private emolument, be brought to justice? May they not defy the Crown, and the officers of the Crown? If your lordships can be brought to sanction with your august authority the proposition contended for to-day, all paymasters and contractors may commit the frauds which they have been in the daily practice of committing, taking the chance of your getting back the money, if you can find them, at the end of an Exchequer suit. If that be all the inconvenience which they have to apprehend, adieu to the care of the public money. There are, in all human probability, persons of the description alluded to, attending this discussion, having a deep interest in the propositions submitted to your lordships by the learned gentlemen, and to which they have flattered themselves with your sanction: your decision is of the utmost moment to the general welfare of the country.

My lords, I shall not think it necessary to trouble your lordships any further upon that part of the case. I mean now to proceed to discuss the ideas of those learned gentlemen, respecting the remedial law: and it will be for your lordships to instruct us, and them, whether the construction put by the managers for the Commons on this law, be that construction in which the public have an interest, and which was the object of the legislature; or whether their exposition of it be the exposition which is to receive judicial sanction.

My lords, this act has two objects with respect to the public money. It directs, in the two or three first clauses, that the money to be issued out of the Exchequer shall be taken to the Bank, and shall not, any part of it, go into the possession of the treasurer of the navy. Why, my lords? because it was not intended that he should have the custody of cash; because it was intended to deprive him of the opportunity of having that custody, except only where it was inevitable. That not he or even his paymaster who pays nothing, but who draws for the money under a written authority from the treasurer of the navy, should have any custody of the public money: it is all therefore to go to the Bank. Then

\* 1 Esp. N. P. C. 60,



the learned gentlemen say, this is the whole object of the act of parliament? and when that is done, the whole is accomplished. Why all this care and caution to get it to the Bank, if the treasurer of the navy might have the custody of it the moment it got there? Such a construction of the act is perfectly ridiculous! They look at one end of the act, cut out the rest of it, and then they say, this act and the Bank clerk only were wanted to take the money safely eastward of Temple Bar; but when in the Bank, the power of the treasurer over it commenced, he might have the custody of it after that time. The act then was *functus officio*, according to them. A senseless thing in parliament! If that was the whole object of it, what was the use of taking care it should go safely there, when the moment it got there, the treasurer could draw it out, without restraint or limit, provided only that he put into the form of his draft, "for naval services?" And when any officer under him, whose sordid appetites might lead him to make pretences, which I will never pay a compliment so degrading to the noble lord as to believe could impose upon him for a moment, suggested to him some contemptible pretence, and imaginary convenience which could not impose upon a man of sense, especially on a person of the high acquirements of the noble lord, of his great experience in all business, that the money might be taken from the Bank, and lodged elsewhere at the discretion of the treasurer or his agent; does the act warrant it? Now, it must be admitted, that the reason why the money is to proceed from the Exchequer to the Bank, without the possibility of the treasurer of the navy's intercepting it, is, to prevent the treasurer's having the custody of the cash. What a singular idea then is it, that the moment that is done the act cares no more about the custody of the cash! It is only the custody westward of Temple Bar, only the custody of it here. Thus is this most important act, as the public supposed it was when they obtained it, and those who laid the foundation for it supposed it would be, made, I will not say senseless, but ludicrous. It is such a representation of the act as it is difficult to state with gravity. However, we have now got the money safe within the walls of the Bank; then what is to be done?

My lords, the fourth clause directs, "That the treasurer of his majesty's navy for the time being, by himself, or the person or persons in his office duly authorized by him, from and after the first day of July, 1785, shall draw upon the governor and company of the Bank of England for all navy services whatever, and shall specify in each and every draft, the head of service for which the same is drawn; and no draft of the said treasurer, or the person or persons authorized as aforesaid, shall be deemed a sufficient voucher"—I will take that branch of this clause afterwards, I stop therefore at the words "for

which the same is drawn." Why, when it is in the Bank it is to be applied to navy services; it must be drawn for, for those navy services by somebody, but it must be drawn for, for navy services; that is the object of the act: not that the form of the draft is to be for navy service merely; not that in consequence of any body's ideas of convenience, he may draw a draft by way of having the custody of the cash somewhere else, in any other depository than the Bank: that is a thing distinctly prohibited. Then, my lords, can it be contended under this fourth clause, that the treasurer of the navy or his deputy, specifying only in his draft that it is drawn for navy service, may carry the money elsewhere for his own convenience, Mr. Trotter's convenience, or the convenience of any other person? The act can bear no such construction. The Bank indeed is justified in not paying the drafts of the treasurer, unless they shall specify the head of service for which they are drawn. It is immaterial to the Bank whether the drafts specify the real services to which they are to be applied or not: the Bank is justified if the drafts are drawn in the form which the act requires; not so the treasurer of the navy, he is to draw for navy services, but he is to draw *bona fide* for navy service; he is not to draw the money out for the purpose of defeating the principal and main object of the act, its corner stone, its sheet anchor. There is no phrase, however emphatical, that may not be applied to express that the object of this act was to prevent the treasurer of the navy from having the custody of the cash, and there is not a pretence to justify the drawing out any part of the money, and depositing it elsewhere, till it was wanted.

Before I proceed, I would trouble your lordships upon the following clause, which is a proviso rather than a distinct clause:—"That the monies to be issued unto the governor and company of the Bank of England, on account of the treasurer of his majesty's navy, shall not be paid out of the Bank unless for navy services; and in pursuance of drafts to be drawn on the governor and company of the Bank of England, and signed by the treasurer of his majesty's navy for the time being, or the person or persons authorized as aforesaid."—Your lordships see that there are two parts of that sentence—it shall not be drawn out unless for navy services, and in pursuance of drafts to be drawn in the way this clause prescribes. First, "unless for navy services." Then how was this drawn out for navy services? If that proposition means, that some time or other the money has been applied to navy services; that I deny to be a correct interpretation of the act: if it means that the money two months or two years afterwards was applied to navy services; I deny that to be a compliance with the spirit of the law: if it means that money carried from the Bank, and in the mean time deposited elsewhere,



was afterwards used for navy services, and that can be justified, because the draft specified it was drawn for navy services; all those propositions I deny: and yet your lordships must, by applying the law to the facts of this case, affirm all those propositions, before you can sanction the doctrine contended for.

My lords, the latter part of the act directs, "That upon the death, resignation, or removal of the present, and every other treasurer of his majesty's navy, hereafter to be appointed, the balance of cash, for which he shall at that time have credit on his account or accounts as treasurer of his majesty's navy, with the governor and company of the Bank of England, shall, at the end of the current month after a successor shall be appointed to the said office, actually vest in such successor in trust, for the service of the Navy under the respective heads, and be forthwith transferred, and carried over;" which supposes it to be at the Bank. It directs an account to be kept by the treasurer of the Navy, demonstrating that all he was intended to be, was a mere accountant, according to the spirit and letter of these reports, and to cease to be a banker.

My lords, in construing this act the 11th clause, for the effect of which I recollect my friend Mr. Adam felt some apprehension, is extremely remarkable. Here is a proviso, "That this act shall not extend, or be construed to extend, to prevent the treasurer of the Navy from issuing to the pay-clerks at the several out-ports, such sums as may be thought necessary by the Navy board, for paying ships, and carrying on recalls; and the pay-clerk at each port shall, and he is hereby required to make up at the end of every month, an account of all his receipts and payments during that month." I say upon this, when my learned friend, Mr. Plumer, asked, whether the money could be safer with a subordinate of the noble lord, than with the noble lord? I say, the law is the noble lord's justification; he would not be responsible for the money in the hands of his pay-clerk, because the law directs it shall be issued to him; and if he had wasted or embezzled the money, the noble lord would not have been responsible; because what he had done would have been in pursuance of the act of parliament; but this is not unlimited, because those sums are only such as shall be thought necessary by the Navy board, for paying ships, and carrying on recalls.

Then what am I to think of an act of parliament which contains in the body of it this proviso, "that nothing shall be construed to prevent him from drawing for such limited sums as may be thought necessary by the Navy board, for paying ships, and carrying on recalls?" Seeing in a law such a proviso as this, can I construe it in the way in which the learned gentlemen of counsel for the noble lord, call upon your lordships to construe it?

My lords, I wish to make one observation

upon the nature of this office, before I address to your lordships a few words upon the effect of the construction which my learned friends are sanguine enough to ask from your lordships. There is one head only, my lords, of public money in this office, for which the treasurer of the Navy applies of his own motion, and no other. He, or his deputy, under his authority, applies for money to pay Exchequer fees; that is a distinct matter, and does not follow the rest of the account; and here is the only exception in the act: And with respect to the small payments which are made, all has been said upon that subject that need be said.

Now, let us try the two constructions. We are contending for this: Not that the noble lord, or any other treasurer of the Navy, may not furnish those officers, who are to make the small payments, with such sums as shall be necessary for that purpose; if any treasurer were questioned in a criminal court for having abused his power in doing so, he would have a complete answer to the allegation against him, by showing that he had only *bona fide* done so. The act enables him, under the authority of the Navy board, to issue money for paying the ships and carrying on recalls. Then beyond that what is the inconvenience? what is the object of the law? Can a doubt be raised in your lordships' minds that the principal object of the act was to prevent the public money, at any time and by any means being deposited any where but at the Bank; that all that is said is subsidiary and secondary to the attainment of that end? If that be so, upon what warrant is it that such a strange construction is asked as shall pervert this wise and salutary object of the legislature? What is the inconvenience of our construction? None can attend it. The public money is safe, it is free from risk; it is safer and better for a public accountant, and if your lordships thought yourselves at liberty to consult the convenience of public accountants themselves your lordships could not put a construction better for them, than to remove all opportunities of dealing with the public money, and all temptation of meddling with it. Your lordships could not put a better construction for them and their families, than that we are contending for. But take the reverse; look at the construction the learned counsel ask for! What does it lead to? Why, if this be done, the moment the money gets to the Bank, may not the treasurer say, I think it more convenient to have it at Charing Cross, or in the Strand; and may not his deputy, (for let me here say, the high and respectable person who always fills this office is frequently occupied with very different pursuits, and the execution of the duties of this office is left to some such persons as your lordships are brought acquainted with upon this occasion,) —upon the score of convenience, or any other false pretence to do the same.

In this case it is said, no loss has ultimately



been sustained by the public. Is that to regulate the construction of this act of parliament? What may be the case to-morrow? What may be the case of the next public accountant? Was it that loss was certain to happen? or, was the object of the legislature to prevent the risk of loss? Was it not to remove a temptation of delay in passing the public accounts? Was it not that public accounts, such as those that remain at this day unpassed of more millions than I am capable of counting, those of 1758 and 1760 (now at a distance of time during which children are grown to be old men), should not recur? Your lordships are called upon to give a construction to this act, which is to lead to a continuance of all these abuses. Give him but the custody of the public money, will the accounts be proceeded in? will they be carried forward? But give his subordinates and deputies that power, will they ever be passed? Is it to be imagined that those upon whom the making up these accounts will depend, will part with them; in other words, that they will part with the money? Should they be the best and most moral men, will your lordships subject the public money to this risk by placing it in such a state? It was safe where Mr. Trotter says he put it. No doubt it was safe, so far as its safety depended on the credit of the persons in whose banking shop it was; but it was subject to Mr. Trotter's call; it was subject to his draft; he might take it from Mr. Coutts's the next morning.—These are the consequences of that construction which is contended for, on the other side. Your lordships are to look at the mischief which was intended to be suppressed; your lordships are to look at the policy of the legislature in this act of parliament. You will give it a liberal exposition, such as, according to the principles of our jurisprudence, courts of justice do give to all remedial laws. No public accountant ought to be heard to ask for another construction. What interest has he to state a right of carrying the public money elsewhere? The first learned gentleman stated, that it was his right to do it. My lords, he has no right, but to be a trustee for the public; his obligations are all the obligations of a trustee; and whatever those obligations would impose upon any individual, who had the money of any fund in his possession, he was under obligations as strict, or perhaps more strict; because, if such person acts *bona fide*, if he acts for the best, there are many instances in which he will be absolved from loss. But here is a plain duty prescribed to this public officer; he is only to pursue that duty; and no defence ought to be received from him which goes the length of claiming a right to deal with this money, or to suffer any person under him to deal with it, out of the course of the act of parliament.

The noble defendant's knowledge of Mr. Trotter's transactions, charges him with them upon the acknowledged principle laid down by lord Mansfield in that case to which I have

referred, upon the acknowledged principles of jurisprudence. He knew of that breach of the act, committed by a person whom he had appointed by his sole authority, and who was removeable at his pleasure; he knew it, and he permitted it to be done. I should be glad to hear, if it were not indeed too late now to hear the argument that could be addressed to your lordships, or any court of justice, to absolve lord Melville from the consequences of Mr. Trotter's acts, after lord Melville's own confession.

My lords, I beg your lordships' pardon for having addressed you at this length, upon a subject of the deepest importance to the country. My lords, there never was before, in a court of judicature, a cause pregnant with more public consequences than this your lordships have now to decide. I shall have as little satisfaction as any friend of that noble lord, in seeing him subjected, in consequence of your lordships' judgment, to any mortification; but an attempt has been made to excite a weak and feminine compassion for the noble lord in the minds of this court. He has from many persons, no doubt, the highest claim to respect; he has, no doubt "honour, love, obedience, troops of friends," knots of dependents, in various parts of this extensive empire; but the public, I hope, has not fewer friends. And, my lords, I trust that your exposition of this act of parliament; your judgment, forgetting, as I am sure you will do, all the personal consequences to the noble lord, and applying the same law to him as you would apply to the meanest subject of this country, will not disappoint the anxious expectation of the Commons of the United Kingdom, and of an intelligent and enlightened public.

Mr. *Whitbread*; My lords, the Commons having addressed to your lordships that part of their reply to the defence of the noble viscount, which consists of a due exposition of the law upon this subject, through that powerful organ which has just ceased to speak; and he having completed, for the satisfaction of your lordships, and in refutation of the learned counsel on the other side, that perfect argument which you have just now heard; I am commanded, in pursuance of that method which, from the earliest period of this prosecution, they have thought it their bounden duty to adopt, to reply generally to all that has been urged on the part of the noble defendant. But, my lords, after the confident manner in which you have been spoken to by the learned counsel during twelve hours, how shall I address you? My lords, it can only be in the knowledge I have, that confidence is not always the sign of strength; and that diffidence does not always argue the weakness of a cause. For, my lords, neither have I that *fulcrum* which the great Syracusan philosopher, in the physical world, said he could not obtain, but which a modern orator has boasted before you, that he, in the moral world, pos-



sessed; neither have I that *fulcrum* by which I could wield your lordships at my will; nor, if I had it, by heavens! would I use it to confound the elements of moral justice in this court, any more than Archimedes himself would have used it in the physical world, if he could have obtained it there, to confound all the powers of nature. I would not attempt, if I were able, to shake, your noble minds from the due course of justice: and if I were to tell you there was a point in the moral universe upon which I could stand to effect it, you would deride my assurance; you would know the attempt to be as impracticable, as, if it were practicable, it would be criminal and foul.

Let not any man say, that the thread of those events in which he is engaged is spun to its utmost extremity. Let not any man say, in the anguish of his heart, that afflictions cannot increase upon him; that he has indeed drunk the cup of bitterness to its dregs. Let not any man, under any of those trials of public life in which he may be involved, imagine that the corroding cares and anxieties which surround us in the deep visions of the night, and attend our daily path, can admit of no accumulation! To these reflections, my lords, I am irresistibly led by those observations of the learned counsel on the other side, which have been addressed personally to myself, and the effusion of them before your lordships will afford me some relief.

If, my lords, at the moment I first read the *impartial* report of those able commissioners, one\* of whom has appeared as a witness at your lordships' bar, I was stimulated with an ardour to see, what I thought, the wrongs of my country redressed; if I was anxious when I first brought the matter before the Commons House of Parliament; if that anxiety continually increased, even amidst the success of my endeavours, up to the very moment when I had the honour to address your lordships at this bar; I protest, that all I have before felt is gone, and vanishes, when compared to the feelings of this day. If, indeed (as represented by the learned counsel† in the vein of refined sarcasm which pervaded his whole speech), I have fulfilled all the various duties, which it was necessary that one or more men should undertake upon this occasion; if I have not only hewn the stone, and drawn the water, but have sketched out the foundation, and attempted to rear the fabric in part,—if hands, far abler than mine, have since contributed to the work; and if, at last, I am deputed to put the key-stone to this arch;—when I know that the materials are at hand; when I know that all the efforts to destroy the work have been vain, and that it depends only upon my steadiness and skill to complete the whole; your lordships will surely pardon me when I

claim some indulgence at your hands;—and, notwithstanding the attention with which you have been pleased to honour me and this cause, I entreat the favour of you, if I am not able to express myself so concisely as I could wish, to grant me your patience to the end.

But, my lords, let not that learned person think he has succeeded, in what must have been the main object of some parts of his speech, to distract my attention from the cause to myself. The stores of his classical mind may have furnished him with repeated examples where the race has not been to the swift, but to the crafty; where, by attending to lures purposely thrown out, those who, but for their own unwariness, ought to have succeeded, have been obliged to yield the prize. In the tales of infancy, in those eastern fables which are first read with avidity, because they gratify the mind, as food is taken because it gratifies the palate, but which, when well digested, become the subject of mature wisdom in riper years, I have learnt the maxims of prudence. There I have read, that there was placed at the top of some lofty mountain, a great and desirable prize, which many had undertaken to obtain; but in the approaches to that prize there were such formidable aspects, such voices, such threatenings, such provocations of temper, and also such allurements of flattery, that many who had attempted it (forgetting the rule which was laid down as indispensable to their safety, not to attend to the terrors or temptations of the way, but to keep straight forward) were turned into stone;—the one who was proof against all this, succeeded and obtained the prize. So, my lords, I trust that I shall neither suffer any provocation of temper, nor any compliment which the learned counsel may have thought fit to bestow upon me, to tempt me, nor any self-love to prompt me, to turn aside from the object I have in view,—which is, to obtain justice upon lord viscount Melville, whom I here declare, in the face of his learned counsel and the public, we have proved guilty before your lordships.

My lords, the time will come, and it is not far distant, in which the learned counsel have made it necessary for me to speak of myself; and I trust that, if memory, strength, and life fail me not before that moment arrives, I shall be able to satisfy the learned counsel, your lordships, and the world, that the characters in which I have appeared before you and them are not incompatible; and, conducting myself with propriety as a manager, that I have conducted myself with truth and honour as a witness, in this cause. My lords, I trust I shall be able to show, not only that those duties are not incompatible with each other; but that there are no duties, which can be imposed upon a public man, however numerous, when executed with an upright, honest intention, in the true purity of his heart, and to the best of his ability, that are

\* Mr. Serjeant Praed.

† Mr. Plumer.



not reconcileable. There are occasions when he, whose mind is capacious enough to plan the building, may carry the materials with dignity and effect.

I have certainly felt the severity intended for me by the learned counsel, who has so frequently brought me before the Court; but as the most exquisite pangs of the body are supported by the most delicate and amiable of the human race, not only with forbearance, but with exultation, in the expectation of the delicious and beloved fruit thereof; so I, while writhing under the keen lashes of his wit, found consolation in the indulgence of a fond expectation, that the fruit would be indeed that which I love,—justice to my country: for I knew that his cause must be weak when he quitted it in pursuit of so humble an object as myself.

My lords, I was not wrong when I informed your lordships of the talents of the learned counsel opposed to me:—they have given you an indisputable proof of them now, if they could possibly have been suspected before;—they have acted like able honest men.—Of argument, in point of time or ingenuity, nothing has been wanted; of proof, indeed, on the part of the noble defendant, and of contradiction to the proof we have brought, every thing. They have boldly and repeatedly asserted, that our proof was nothing; they were bound to assert it; but foundation for their assertions there was none; and under such circumstances, what could men do more than they have done?

My lords, it is a wise maxim, that when a man is arraigned of any crime, he should not undertake his own defence. How truly has that been exemplified in the cause now before you!—for, if lord Melville, with all the ability he possesses, had undertaken his whole defence, would it have been possible for him to have made it of that sort which has been attempted by his learned counsel? for which we are to understand, he is not responsible: by which, however, he must at this hour abide. If, my lords, it be wise to trust the defence of a case to counsel, whose passions and whose interests are not so much engaged, whose minds are not prejudiced, and whose consciences do not interfere with their arguments, there is some danger in trusting the defence to two instead of one; there is still greater danger when a part of that defence is undertaken by the defendant himself. All the three have been here engaged, and it remains for some fourth person to show the inconsistencies of the different modes which have been attempted by the two learned counsel, and that which was previously attempted in the House of Commons by the noble defendant himself.

My lords, if, on the one hand, we have had, in a most able speech, for eight solid hours, from one of those learned gentlemen, deprecation, art, contrivance, endeavours to evade, to mislead, to misrepresent;—we

have have had from the other, during four successive hours, bold assertions, of a sort that would astonish any man in a court of justice who had at all attended to the case.—After the attempts to evade by Mr. Plumer, we have concessions and admissions, on the part of Mr. Adam, from which, if the noble defendant were not previously bound by other ties, he could not possibly escape. Upon those admissions, excluding every other thing, if they be true, the noble lord at your bar is guilty.

My lords, I will not follow the leading counsel in this defence, by stating to your lordships what has appeared in or out of this House, previous to the day of trial. It is improper; it is irrelevant; I should not think it decorous. But, my lords, I may be allowed to take a short review of the circumstances of the trial itself, as affecting not only the character of this prosecution, as far as it regards the noble defendant and the public, but as affecting in the highest degree the criminal jurisprudence of this country, and giving to it a character, which, if it had been lost, or were even doubtful before, is now established upon the rock of justice and of truth.—My lords, the learned counsel has talked of associated libellers, of predisposition to punishment, of cruelty, and of the vexation of mind of the noble viscount;—of months passed in calamity. My lords, these are not now matter of consideration; but, if they were, I could refute every position of the learned counsel:—I repeat it, they are not now matter of consideration. He is upon his trial. My lords, by whom is he brought to that trial? by the Commons of the United Kingdoms of Great Britain and Ireland. The Commons are a jealous body; jealous of their own rights, jealous of their own privileges, jealous of any thing that shall interfere with their exclusive and prescriptive rights. He is brought before a court equally jealous of *its* privileges, and equally standing upon *its* points of honour.

If we review the history of this country as to cases of impeachment, we shall find, that these conflicting jealousies and privileges have, upon some occasions, when pertinaciously insisted upon on each side, contributed to the escape of the delinquent: in others, long delay, resulting from peculiar circumstances, has brought the mode of trial by impeachment into disrepute. The assemblage of the public which is now around us, and the structure in which we stand, with all its accompaniments, have been sometimes represented as a vain parade, calculated only to enhance the expense of the defendant, and not conducing to any good purpose whatever. My lords, the greater the publicity, the greater the effect; and I am happy in being able to congratulate the noble defendant and his friends, on the event of this trial, so far as it has gone; which has proved that had he been tried in your lordships' own chamber of



parliament, he would have been at the same expense both as to time and treasure as he is at this day. It is indeed a great satisfaction to me—How much greater satisfaction do I feel, that I can say, the Commons have maintained their dignity: and that that dignity has in no degree been intruded upon by any part of the Court! How happy am I to reflect, that the noble person presiding in the Court has so concentrated all the learning upon the law which has been adduced in the course of our interlocutory debates, that the other great legal characters have entirely gone with him upon every point which has been decided; and not only so, but that all the feelings of propriety, all the judicial dignity, all the mildness towards the defendant, and all the sternness towards the prosecutors, which ought to exist in order to cast a restraint upon improper zeal, have likewise appeared to center in that noble person; so that if there had been wanting a model of trials by impeachment, in all essential points, I think I may venture to say, such model is now afforded.

But, my lords, the Commons are not only jealous of their rights and privileges, but they are also jealous of any attack made upon those whom they delegate to execute their functions: and I wish I could say the learned counsel had so treated the Commons and their managers, as to leave no ground of blame. Insinuations have been thrown out respecting unwearied diligence, accompanied by a tone, which would lead one to believe that, in the mind of the person speaking, that diligence had not been free from persecuting zeal; and some attempts have been made to cast reproach, in cross-examination, upon the mode of obtaining particular papers, which have been brought in evidence before your lordships; it is not because the Commons do not feel these things, that they do not observe upon them; but because they know they stand so high, that they may treat all such insinuations with scorn. If they do not comment upon them, it is not because they forget them, but because they do indeed condemn them.

My lords, as to your own court, something has been thrown out about the possibility of a challenge. Upon such a subject it will not be necessary to say more than this, which has been admitted; that an order was given by the House of Commons to prosecute lord Melville in a court of law, where he would have the *right* to challenge his jurors; that after various proceedings, an eminent member of the House of Commons,\* now no longer attorney-general, but who was immediately succeeded in that office by my able and honourable friend near me, was directed to draw up an indictment against him. What did the noble viscount then do, by the means of one of his friends? For to its present state it came at

last by the interference of one of the persons who had said, either that he was guilty of no crime, or, if guilty, he had already been sufficiently punished. From the mouth of that learned gentleman\* came at last the successful motion, "That Henry Viscount Melville be impeached of high crimes and misdemeanors." I am justified, then, in saying that he is here by his own option; he is here by the desire of his friends, and by their means and instrumentality; for those who originally proposed impeachment, thought, for reasons which appeared to them sound, that the course first adopted by the House of Commons in opposition to them, ought to have been persevered in.

But, my lords, a challenge to your lordships! Is not every individual peer the guardian of his own honour? And can the learned counsel suppose for a moment that before you, clothed as you are, came into this hall, each had not consulted his own honour, and, having found it free from stain, has attended? Having attended, notwithstanding the admonitions of the learned gentleman, *each is bound to decide upon his honour*, whether that noble viscount be guilty or not.

My lords, another part of the course of the learned counsel, on the other side, has consisted in an endeavour to mislead your lordships upon topics far wide of any the Commons have submitted to your consideration. The learned counsel have laboured, both in their speeches and their cross-examinations, to impress you with the merits of that noble lord, and his services in other departments of the state. That he was an admirable secretary of state; an indefatigable president of the board of control; that his care of Scotland was exemplary; in short, that every thing belonging to him was good, but his custody of the naval treasure. My lords, it is upon *that* we charge. We charge not here, that he was remiss as secretary of state; we charge not here, that he was an inefficient member of the board of control; we charge not here, that he did not administer the government of Scotland with propriety, or that he clandestinely created for himself an improper degree of influence in that country. These are not our charges: But, I think, I can perceive the motive which has prompted the learned counsel to speak to these points. He is not ignorant of the political events of these or former days; and he may have thought, in a case where he had no defence, it was his duty to mislead. The Commons, happily for this country, can never be long an unanimous body; and he may have hoped to draw the managers into political discussion. From that also I shall abstain, and confine myself to the charge made by the Commons, of the mismanagement of the naval treasure;—that treasure, which has its fibrous root in the meal of every peasant; in the cloth of the

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\* Mr. Perceval.

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\* Mr. Leycester.



coat he wears ; in the implements with which he earns his daily bread ; in every article he consumes. If it has been exposed to the risk of loss only, without thinking at this moment of the gains the noble defendant may have made ; and if the example he has set shall not be corrected in his person, but shall produce the loss which was threatened by his means : every peasant in the kingdom, every mechanic, every sailor, and the widow and orphan of every sailor, every tar maimed in the victories of his country, must pay a share.

My lords, we have been also told, with a degree of ostentation—and witnesses (the only ones called by the learned counsel for the noble defendant) have been brought to prove it,—of the extreme munificence of the noble defendant to his country ; and the statement of his gifts has been contrasted with a calculation put in by the Commons, which the learned counsel would persuade you, shows all the gains, to the last farthing, that have been made by the noble defendant. My lords, we put in no such calculation ; we do not pretend to calculate the amount of his gains.—We did put in the result of a calculation of profit upon certain parcels of stock, which we have fixed upon him. In answer to this came Mr. Pollock, from the secretary of state's office ; Mr. Chapman, from the war department ; Mr. Litchfield, from another quarter ; and all tell you, that lord Melville, indeed, to their knowledge, has been so exemplary a servant to the public, that not only, as Mr. Meheux says, he has served his country night and day (which I do not now dispute ; let his services be as great as they may in other departments, that is not the question now) ; but that he has voluntarily relinquished large parts of his salary. O ! ungenerous, ungrateful public ! O ! unfeeling Commons !—say his counsel ; who so persecute this most excellent man, whom you ought to revere ; because, as guardians of the public purse, you should revere every man who attempts to ease the burthens of the people ; you have charged him in this paper, with certain gains, and we will show you he has presented you with a great deal more. How puerile ! how absurd ! Supposing, for the sake of argument, that lord Melville had, with a generosity towards the public, of a nature which is always suspicious, given up a large part of his salary ; could that prevent your lordships from pronouncing him guilty of the charge which the Commons bring against him ? No, my lords ; this is not the time to consider any thing but the charge itself. But, at least, it is competent to the Commons to show, that what the counsel build upon has no foundation whatever. That there was no relinquishment of salary ; and further, that the pretended relinquishment of a part of his salary, is one of the acts which would be conclusive against him ; as the strong presumption must be, that he retained the office of treasurer of the navy, for improper purposes.

My lords, there is an undisputed fact recorded upon the Journals of the House of Commons, Vol. LIII. p. 157, which is, that on the revival of the office of third secretary of state, an arrangement was made, by which no secretary of state could receive more than 6,000*l.* a-year in the whole ; and although the resolution proposed to the House of Commons on that subject did not pass, the fact stated is equally beyond dispute ; it is there said, that “ Lord Grenville having, as auditor of the Exchequer, a salary of 4,000*l.* a-year, and, as secretary of state, a salary of 6,000*l.* does not receive of the latter more than 3,200*l.* per annum, and consequently gives to the civil list the annual sum of 2,800*l.*” In consequence of the same arrangement, “ The right honourable Henry Dundas having, as treasurer of the navy, 4,000*l.* per annum ; as commissioner for the affairs of India, 2,000*l.* per annum ; as keeper of the signet, in Scotland, 1,500*l.* ; and, as secretary of state, a salary of 6,000*l.* per annum ; does not, in fact, receive from this last appointment more than 2,000*l.*, and consequently gives to the civil list the annual sum of 4,000*l.*” Why did he give it ? Because he could not help it ; because the arrangement was so made that he could not have more than 6,000*l.* a-year, be he secretary of state, treasurer of the navy, and what else he would, exclusive of his patent places. But why not take the whole 6,000*l.* a-year from the office of secretary of state ? Why retain the treasurership of the navy ? Oh ! he was so important a public man, that you could not find in all England—(alas ! poor England !)—you could not find within her precincts, or even in the adjoining kingdoms of Scotland and Ireland, any body to fill any of the arduous situations in which he was toiling for the public. But are we so unskilled in political arrangements as not to know, that if a treasurer of the navy had been wanting, he might have been found any where ? not to know, that that office is a boon in the hands of an administration ? not to know, that the noble defendant himself is aware, that, in bestowing the office of treasurer of the navy, a great support is created for the administration that bestows it ? But no ;—although secretary of state, president of the board of control, keeper of the privy seal in Scotland, and keeper of the signet,—I will be treasurer of the navy still. Let us a little consider !—Supposing we were making political arrangements together, and I could presume I were a person fit to converse on such matters, I should say, this is a little whimsical ; why will you be treasurer of the navy all the time ? Why, I mean to quit the office of secretary of state almost immediately.—Oh, but you have changed from one secretaryship of state to another, and still you keep the treasurership of the navy !—Why, my lords, if we dive into the reason, it is, that 4,000*l.* a-year, as treasurer of the navy was better than 4,000*l.*



as secretary of state. The Commons, then, my lords, reject this proffered kindness of the noble lord, and say, it is as much a pretence as the 10,000*l.* he states himself to have spent for their sake.

Other arguments have been used of a general nature by the learned counsel, and particularly the first who spoke; but insisted upon also by Mr. Adam, who followed him founded on the habits of the noble lord; his inaccuracy in accounts,—his indisposition to look at figures,—he cannot bear them at all; and as to money matters, look here, look there, say they, to various pages of the evidence, and you must acquit him; because Mr. Trotter has said he was so inattentive as to his private concerns. If there had been nobody to come after them, who had read the evidence, and out of that evidence could extract any thing, and out of their speeches collect more, they might have been in the right; but surely, surely, they were a little off their guard when they stated these things; for what is the very first act of this treasurer of the navy, who cares so little about money? Why this careless, negligent, inattentive treasurer says, Mr. Barré's salary, which is nominally 4,000*l.* a-year, wants of 4,000*l.* a-year so many pounds, shillings, and pence; now, will your majesty be pleased to give to Henry Dundas what was not made up to Mr. Barré?—There is his inattention to his pecuniary concerns, in the first moment of his introduction to the treasurership.

Then, as to talent for figures, they were quite out of his way. Yet the Commons have frequently witnessed the ability displayed by the noble defendant, in opening the Indian accounts, which are of the most complicated and intricate nature. Notwithstanding, he is not only so inattentive to his own interest, as that he never considers whether he owes money, borrows money, pays interest for money, or has money without interest; not only he knows nothing about those matters, but he has no capacity for accounts whatever, even if he had a taste for them. Upon these general topics, I should not have dwelt so long, if it had not been for the indefatigable attempts of the learned counsel, on the other side, to impress your lordships with this false idea of lord Melville's character. There might be another reason why lord Melville continued treasurer of the navy for so great a length of time, independent of those I have assigned, namely, that when he did go out, his balances must at all events be paid up, and that might not at all times have been convenient.

My lords, the learned counsel, who opened the defence, has in a most marked, gallant, but, I cannot help thinking, rather an injudicious manner, considering how that defence has been conducted, told us, that if we could fix the proof of one single act upon the noble lord, he would give up the case, and confess his client guilty.

Immediately upon this assertion, the learned counsel proceeded to consider what had been our means of proof, and after acknowledging a specific fact to have been proved, he says, no doubt the Commons have proved this; but still now after twenty four years, will your lordships expect that we shall be able to disprove it? My lords, unhappily his pledge is given, and we have fixed this single act. I select a single act, for the sake of argument (and to confute the learned counsel one is sufficient), and they have not attempted to disprove it; then a verdict of guilty must pass upon lord Melville, according to their own confession. But your lordships will also recollect, that lord Melville, has most solemnly asserted, under his own hand, that during the paymastership of Mr. Douglas, he never received one shilling of emolument from the public money. He had not only asserted it, but added, that he was ready to swear it.—Before he offered to swear it, he ought to have ascertained that he had the means of showing its truth.

The learned counsel, in the next place, lament over the death of witnesses, the silence of Mr. Trotter, and, last of all, they have the conscience to lament over the destruction of papers. Would to God, my lords, for the sake of justice, I could revive Mr. Douglas! Oh! What an unwelcome visitor would he be to lord Melville, if it were only because he could read his own manuscript; but he is dead, and, would you believe it? most unfortunately for the defendant. No, my lords, not so, most unfortunately for the prosecutors.—But Mr. Trotter was dumb—and then, the vouchers are all destroyed. Why, my lords, the death of Mr. Douglas was the act of nature; the destruction of the vouchers was the joint act of the defendant and Mr. Trotter; and the dumbness of Mr. Trotter was owing to the crimes for which he has now received his pardon: and there is the true solution of that bold defence made by the noble lord; there was the triple brass which he bound round him when he went into the House of Commons. "I know," said he, "that Mr. Douglas is dead, I know that Mr. Trotter is dumb, I know that the papers are destroyed: why then I may defend myself as I please, and I shall never be detected." But, my lords, industry and labour, without talent, will do much; we toiled, we did every thing that honourable men ought to do; but we did no one thing that can bring a stain upon the Commons House of Parliament; and by perseverance, we have succeeded in proving more than at this distance of time could possibly have been expected.

Then, my lords, as to the evidence we have brought, and the nature of that evidence, both parol and documentary. The learned counsel have talked a great deal about our hunting in this place and that place; of our having possessed ourselves of all lord Melville's private papers; and they have thereby endeavoured to



throw an odium upon the prosecution. Why, my lords, where were we to find the traces of the charges we had made, except in the private papers of lord Melville? If the charge be, that a great public officer has taken advantage of his situation, to make profit of the public money, where can the traces of his deeds be found, except in his private papers or account books? We have abstained, as much as possible, from unnecessary knowledge of his private affairs; we have taken nothing but what we thought essential for the prosecution; and we leave to your lordships to judge whether we have made any improper use of our authority. Nay, I call upon the noble defendant himself to say, whether the Commons have not treated him, in that respect, as he would wish himself to have treated any other person.

My lords, another subject has been touched by the learned counsel; that of lord Melville's having hastily made some rash assertions, of his having used indiscreet expressions, and when *called upon* (I think that was the expression) to speak, that his speech had in part been taken down (upon which I shall have occasion to animadvert hereafter), and that even his silence had been construed to his disadvantage. What is the true state of the case? The learned counsel says, that the noble defendant had long courted inquiry. So far from it, endeavours were used to stifle all inquiry. At length, however, the time did come, when, of his own free will, he addressed a letter to the Speaker of the House of Commons, requesting to be heard in his defence. The letter\* was founded upon a rumour which the noble lord had heard, that a motion, in the event of which he was deeply interested, was to be made in the House of Commons, by a member of that body. His act in going to the House of Commons to defend himself was voluntary, and it was our duty to pay strict attention to what he said when he came there.

My lords, there is another subject upon which, before I proceed to combat the argument of the learned counsel, I may be allowed to dwell, because it is not only of moment to myself, but to all society, that it should be a little discussed;—I mean the attack the learned counsel has thought proper to make upon me, because I omitted nothing which I thought could be favourable to lord Melville. Was it handsome, on his part, when I did, as in justice I was bound to do, speak of those acts of lord Melville, which I thought praise-worthy—was it handsome in the learned counsel to throw those expressions in my teeth, and to say, “you yourself have said so and so, of lord Melville, how then can he be guilty?” I repent not a word of that part of my opening speech;—the learned counsel has it written down, and repeated it yesterday:—I retract not a word of it. I am

happy in being able to say any thing to the advantage of a man under accusation; but it weighs not in this cause one feather; these are only the little incidents by which generous minds endeavour to soften the asperities of life; but the learned counsel, whenever they draw indictments, or make accusations, wish that it should be all in fire, vengeance, murder, and blood. We confine ourselves to the charge we make, we urge nothing out of it; and if the noble lord has any merit, upon any other account, we wish him to take it.

It has also been put to your lordships, as a question by the learned counsel, and in a manner meant to create strong impression—“Can your lordships for a moment conceive, when lord Melville had such opportunities of taking largely of the public money, that he would condescend to pick up shillings?—that he would take from the public purse in such a paltry way?—that he would commit his honour for such trifles?”—I can only answer, we prove it. What a man would or would not do, in particular situations, is not the speculation we are now upon; but we are upon the proof of that which we assert. And when it is asked, could he risk his high situation for a thousand, two thousand, or ten thousand pounds? I would only remind your lordships, that it has been also asked, and from divine authority, “What can a man take in exchange for his own soul?” and yet do not men every day risk their immortal souls for things even beneath that which the noble lord has taken?

The learned counsel has then made a very improper use of that most luminous, satisfactory, and conclusive summing up of the evidence on the part of the Commons. Unable to answer the statement, he was obliged to pervert and misrepresent it. He says, the learned manager who summed up has put the issue of the prosecution upon two or three particular points. My lords, that learned manager, in a manner which we should have thought almost impossible, if we had not seen that he had effected it, stripped all the facts of their detail and figures, and put them before your lordships in a shape in which you *must* lay hold of them; in a way in which they could not possibly escape you;—and he chose the most prominent points of the proceeding, in order that he might relieve your lordships from that dull history into which I shall again be obliged to go.

But does the learned counsel think, that if any of the various details, which are necessary to form the links of the chain with which we bind lord Melville, should, in the summing up, have been omitted by the learned manager, that the Commons abandon that which an individual manager has, even with his capacious memory, forgot to state?—does he think we are bound by his omissions?—has he made any omissions? My lords, the learned manager who summed up the evidence stood in a situation of greater difficulty,

\* See it p. 560.



as indeed he was well calculated to do, than that in which I am now placed. He told you, the evidence he was to sum up was *proof* so far only as it should be uncontradicted. I am now in a position, in which I can say, that not one single tittle of evidence has been contradicted by the defenders of lord Melville, and that their argument has not succeeded in invalidating the observations made upon that evidence.

The leading counsel has proceeded in another way, in which, from his profession, he is admirably calculated to succeed—he quarrels with our articles as not being drawn with a sufficient degree of precision. The Commons assert that they have a right to draw their articles in a manner more general than that in which indictments are allowed to be drawn in inferior courts; and not only that they have a right to do so, but that it is their duty to do so; and that from the earliest precedents of impeachment, down to the present time, it has always been the practice established and conceded to them, and from which, if they departed, they would be blameable.

Mr. Adam yesterday irregularly quoted, as his learned brother had done the day before, the speeches of members of parliament. Mr. Burke was one of the members quoted by Mr. Adam. Mr. Burke was a fellow manager of Mr. Adam in an impeachment at this bar. After that impeachment was over, Mr. Burke drew up one of the most able and learned reports ever placed upon the Journals of the House of Commons. In that report, Mr. Cowper,\* who has been justly cited as a great authority by Mr. Adam, is cited also as an authority:—"The counsel (says Mr. Cowper), cannot but know that the usages of parliament are part of the laws of the land, though in many instances they differ from common law, as practised in the inferior courts in point of form. My lords, if the Commons in preparing articles of impeachment should govern themselves by precedents of indictment, in my humble opinion, they would depart from the ancient, nay, the constant usage of parliament. It is well known, that the form of an impeachment has very little resemblance to the form of an indictment, and I hope the Commons will endeavour to preserve the difference by adhering to their own precedents."† I might refer your lordships to further matter in the same report, but this is sufficient. The right of the Commons is undisputed, and I assert that our articles are drawn, according to the form of articles of impeachment in parliament.

My lords, I know it has been successfully contended from the place in which I stand, that your lordships are not bound, in impeachments in parliament, by the rules of evidence observed in inferior courts. The Commons have made that assertion, and it is

their duty to make it, because upon certain occasions it might be necessary to act upon it. But I beg to call your lordships attention to one feature peculiar to this prosecution; that the Commons have not claimed any such right; but the proof brought upon every article, has been according to the strictest rules of evidence that could be maintained in any court. I ought to say something, perhaps, to the learned counsel, on the manner in which he has observed upon the evidence that we have offered. In the first part of the proceedings, he took a great variety of objections: happily, most of the points, by the wisdom of your lordships, were decided against him. He acted in a triple capacity; first of all, he had in charge the honour of the court; then he had in charge the character of the Commons; but lastly he took charge of that which was consigned to him, namely the defence of his client. I do not desire to bind the learned counsel by his assertions on evidence; but if I had made memoranda of all he said was not evidence, I believe I should have compiled a pretty good evidence book.

My lords, what the law was before the act of the 25th of the king passed, has been so satisfactorily established, by the learned manager who preceded me, that I shall not venture for a moment upon the same ground; but I presume, your lordships will allow me to suppose, after that argument on the part of the Commons, that a person after a salary granted, and after having so entered into a compact with the king (provided even no prior compact should have existed) was in point of fact bound to keep the condition of that compact, and that a violation of that condition exposed him to a criminal prosecution. Such I take to be the law as established by the attorney general, before your lordships this day.

Then let us consider whether the compact itself was not made more binding upon lord Melville, than it had been upon any other person. I have stated that he expressly demanded a nett salary, and would be contented with nothing less. He said to the public, You shall perform your part of the contract to the utmost farthing; then I say, on the part of the public, you shall perform your part of the contract to the utmost farthing also; and if I were to come to a calculation of figures, I could show how much, from the month of August 1782, the noble defendant has been paid, in virtue of a contract which he has not performed.

My lords, the resolution of the House of Commons of June 19, 1782, has been quoted by the learned counsel, and he has found great fault with the Commons, because, he says, the resolutions are not *all* stated in the preamble to their articles, and therefore are not *fairly* stated. There is a further resolution it seems, which would have formed a connexion with the one cited, and put the matter in another point of view. The learned coun-

\* Afterwards Lord Chancellor Cowper.

† Commons Journals, 1794.



sel allows that the noble lord, in consequence of that resolution, and after the grant of salary, was bound in honour at least. Did he adhere to those obligations of honour?—they acknowledge that he abandoned them. But what was the other resolution of the House of Commons which was read by the counsel? The Commons having declared it inexpedient that certain practices should prevail any longer, further declares, that they have not time, in the present session of parliament, but that they will in the next make a law for the regulation of the Navy-pay-office.\* Then the noble defendant, forgetting all his obligations of honour, which, by the addition of the last resolution become, if possible, still more binding, avails himself of the interval, in order to make profit of the public money.

My lords, upon the resolutions, and the common law, the learned counsel says, Here I take up the gauntlet of the honourable manager; and he certainly is on every account more capable of arguing these points than I am. But this happens not to have been the place where I threw the gauntlet down;—the learned counsel has moved it a little forward, in order to take it up at a place he might have thought more convenient to himself. however, if his doctrine had not been *learnedly* refuted,—if all the managers had been *indocti*,—if no lawyer had been found among them, I think, as common law and common sense go together, it might have been possible for a member of parliament, not a lawyer, to have defeated him. It is granted that there were obligations of honour, and civil obligations, on the noble lord. We say he was criminally responsible for this use of the public money, and the abuse of his trust. His attention then having been so roused by these resolutions, he did that which one would hardly guess any man would do,—he really did apply paltry sums, at different times, to his own paltry purposes;—he did that which, the learned counsel says, it is impossible he should have done, but which we prove he did: He did, by driblets, take from the Navy treasury, for his own use, what he had no right to take.

My lords, the learned counsel, with a degree of pleasantry, which he said he took from me, but of which I was not conscious, for I am not gifted with such talents, has laughed at the manner in which we have obtained our evidence on this division of the charges.—We have gone to this place, and to that place, and given you the memoirs of money,—I think was his expression. My lords, this reminds me, that a certain Guinea did once write its history; its name was Chrysal—If that guinea should, by chance, have been one of those in the possession of Mr. Douglas, and have brought the history of its adventures down to the present period!—We are told that that guinea was once in the possession of a learned counsel, who, by his ability, and

ingenuity, obtained a verdict contrary to evidence and the matter of fact;—that must surely have been Mr. Plumer himself. After that, I think the guinea found its way into the pocket of a great statesman, who is said perfectly to have known its value, but not to have had a greater affection for it than a guinea deserved; that statesman was lord Chatham, then Mr. Pitt: and Chrysal is represented to have been present at an interview which passed (and a very affecting one it was), between lord Chatham and general Wolfe, before the latter set out for his command in America. Now, if that guinea should have travelled from the Bank into a certain iron chest, after having been counted over by Mr. Swaffield; proud of his destination, Chrysal would have exclaimed, “Oh happy guinea! now thou art going to be the reward of some illustrious hero, or of some meritorious sailor, who has fought for his country; thou wilt, perhaps, be sent to some out-port, to contribute to the merriment of the tar—or be employed in the more engaging duty of clothing his wife or infant child—or administering to the comfort of his widow!—But what was my indignation when I was taken out of the chest, not to be applied to naval purposes, but to be used for a paltry private purpose of the treasurer; how great my consternation, when, happening to be present in the House of Commons, I heard that treasurer declare, that I, together with ten thousand others, had been employed to perform some important service for the public. When afterwards I travelled into Westminster hall, in the pocket of a bank director, on the first day of the defence in lord Melville’s trial, I was a little satisfied with the modesty of one of his counsel, who did not affect to say, that what lord Melville had before declared was true: But I was astonished, beyond all conception, when, on the third day of that defence, Mr. Adam reasserted that which lord Melville had asserted before.” Why, my lords, the memoirs of this guinea, and about three and twenty thousand others, are said to have been written in a certain manuscript, and to have been shown to the learned counsel, but he, like a wicked sprite, well known on the borders of Scotland, ycleped Gilpin Horner, has shut the book so fast, that we can no more open it, than the lady of Buccleugh could the book that was taken from the tomb of the dead man at the abbey of Melrose;—and, therefore, my lords, there we must leave it. But we have shown, by the clearest evidence, that those statements—which could have been made by Mr. Douglas, could he have been brought to life—that the statements which would have been found in the book, if received, are true; and we have traced out of the naval money, intrusted to lord Melville, various sums;—and we have shown where they did *not* go. We have distinctly proved

\* *Vide Commons Journal*, June 29, 1782.

\* *Vide Lay of the last Minstrel*.



three interceptions; out of a sum of 45,000*l.*—out of another sum of 50,000*l.*—and out of another sum of 93,000*l.* viz. one sum of five thousand pounds, and two sums of three thousand pounds each. We have shown, that no part of this intercepted money went to the Navy-pay-office; we cannot show where ALL of it went, but we have shown where a part of it did go, we have shown that, on a certain day, a Bank note, which was taken at the Exchequer by Mr. Douglas for the payment of navy services, was carried, by Mr. Dundas himself, to Mr. Drummond's. Then the learned counsel turn upon us, and say, Well, now you have proved this,—what of it all? You have proved a paltry Bank note, as if you were examining into the accounts of an insolvent debtor, or as if you were trying a man for forgery. I thank the learned counsel for the illustration he has afforded me. I call upon your noble selves, I call upon those learned judges who are present for your assistance, to inform me whether there requires more strict proof in this case than there does in the case of forgery. The learned counsel has said that the life of lord Melville is nothing to him, compared with his reputation. Reputation ought to be far more dear than life to every honourable person; but, my lords, let us recollect, that to deprive a man of his life, is to inflict upon him the greatest punishment that man can inflict upon man; and notwithstanding lord Melville's reputation is now at stake, I ask your lordships whether your feelings would not be more acute even than they are now, if I were arraigning lord Melville for a capital offence?—assuredly they would; for in every stage and condition of man, from the highest to the lowest, the greatest penalty he can pay, is life; and that is the penalty paid for forging a Bank note. If then we have proved lord Melville guilty of having taken this money from the naval treasure (be it one shilling or a hundred thousand pounds) upon evidence which would induce you to send a criminal to execution, we have gone to the extent of moral possibility. Is there such a thing as equal justice in this country; are all men before all tribunals throughout this happy land, tried by equal laws? and shall you be obliged without mercy to condemn and execute a mean criminal, who has forged a one-pound note, and when I have proved that lord Melville has peculated to the amount of a thousand pounds, shall you not find him guilty of that peculation? Is it a paltry sum only which we have proved? It is the barb which fixes in him—it is that which holds him to his crimes—It is not that which we suppose to be the only crime, but the one which unites him to all the rest.

My lords, is it admitted as any vindication of a poor felon, a victim to the temptations which the noble defendant when in the Navy pay-office endeavoured to remove (to his credit I have before spoken it, and to his credit, I am not afraid to repeat it), to say that one

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fact only has been proved? Is not the answer ready?—he may have forged thousands. Is it not generally the case? The proof of one is sufficient to fix upon him the guilt;—for that guilt he dies. The proof of this one act fixes upon lord Melville his guilt; and if it stood alone, you must convict him.

The learned counsel, in cross-examining some of the witnesses produced before your lordships, have asked them, with regard to their memory of the facts on which particular instances were founded. Why, my lords, when a banker's account book is opened before a man at the distance of twenty-four years, can you expect from the nature of his business, which, in making entries of this sort, is little more than the operation of a mere machine, that any account can be given, more than that he did actually write the entry, and that he can swear he made no false entry? But they gravely ask, have you any recollection upon the subject? is the recollection of the learned gentleman always accurate? Is the recollection of persons in his profession always so accurate, as to entitle him to ask a banker's clerk, whether he recollects every entry in the book of his employer? Indeed it seems to me as absurd as it would be to ask a steam-engine how many gallons of water it has drawn in an hour, when the register upon it will give you all the information you can desire; and the machine and the man are equally likely to give any explanation beyond it. But to illustrate this point, and to show you that things which are the most obvious, which ought most to be known, are not always known by those whose duty it is to know them: It was not long since a learned judge, lately an ornament of the bench (I mean the late lord Alvanley) was trying a cause in this hall, and an act of parliament was in question: a learned sergeant, who may perhaps now hear me, was pleading before him, and he quoted a particular section of the act. Lord Alvanley said, the clause was not in the act. "Why, but my lord, here it is," said the sergeant "Never mind, I tell you, I know it is not there;" said the judge. "I beg your lordship's pardon, but here it is in the book; read it." The noble judge at length took the book, and having read it, exclaimed, "O true! Here it is, as sure as God is in Gloucester!"—There the section was in the act, as sure as God was in Gloucester. Can these learned persons be so extremely surprised then at the failure of recollection in a clerk as to a mere entry of a Bank note? There is another anecdote which I recall only to the recollection of many of your lordships; and I am sure it is well known to every one of the learned judges. Lord Mansfield, whose opinion has been quoted, was a cool and dispassionate person, one of the greatest eminence; he was one who, before he delivered an opinion, reasoned upon it no doubt to the utmost stretch of his ability; and delivered an honest opinion upon every point of



law submitted to his consideration. It so happened, however, that a cause was tried before lord Mansfield, upon which he declared a very strong opinion. The person pleading before him said,—“It is extraordinary your lordship should hold this opinion, for I have a paper signed William Murray, which gives an opinion directly contrary to the one now held by your lordship on the very same subject.” Lord Mansfield denied it; he had never written such a thing; his sentiments on the law were quite the other way. But the paper had been written and signed by William Murray, when attorney general, and contained the exposition of the law stated by Mr. Fearn, the learned person pleading; and it has since been published. Lord Mansfield, however, having entirely forgotten the fact, was of a totally different opinion when presiding in the court of King’s Bench.—I only mention these circumstances as illustrative of what I feel with regard to a question which appears to me to be so unnecessary, but which the learned counsel have constantly asked; and to which no reasonable person can, I think, expect any other answer than that which has been as constantly returned. Then, my lords, as to the witnesses themselves: really, they were some of them examined as to their accounts, in a way which was very remarkable; the learned counsel expected a man to be able to travel backwards and forwards through his book, and at the moment to explain every particular; and he pointed hastily here and there, and said;—“Now tell us what that entry means.”—“Why, said the man, seven and six, seven and six mean seventy-six:” whereas, they meant no such thing. And when he came to look at it out of the box, coolly, the thing was perfectly plain, as we afterwards proved to the satisfaction of the Court.

Surely then, my lords, when we prove that lord Melville’s paymaster, Mr. Douglas, by his authority, got a thousand pound note at the Exchequer; that the note was not paid into the Navy-pay-office; that it went to lord Melville: that it was carried by lord Melville himself to his banker; that lord Melville took change out of it; that at the same time his banker’s account was in such a state, that he must necessarily, the moment it was paid in, derive profit and emolument from it. If, by such proof, this be not fixed upon lord Melville, no proof of guilt ever can be fixed upon any man in the world. I talk not now of the quantum; that is a totally different consideration.

Further, my lords I call upon the counsel to recollect that we have proved that another note, precisely under the same circumstances, and so identified, went (not paid in by lord Melville himself, but paid in by Mr. Douglas) from lord Melville to Messrs. Moffatt and Co., and there discharged a bill drawn payable to a Mr. Newbigging, which was bearing interest:—that is the second note we have traced.

Then have we done nothing? Oh! say the learned counsel, you have proved it, to be sure; but after all, the thing is impossible. My lords, there is a familiar anecdote which strikes me as illustrative of the alleged impossibility of a thing’s having happened after it has been proved:—a friend of mine, not a very good whist player, was once playing in a public room; and he happened, just at the crisis of the game, to have a very good hand; a person, who did not know how badly he played, looked over him, and betted that he would win: the rubber, however, was lost; the gentleman paid his money, and, turning with indignation to the player, said, “Why, sir, with that hand it was impossible for you to lose.” “Very true, sir;” said my friend, “but you see I have done it.” So to the repeated exclamation of the learned counsel, “Impossible!”—we can only say, “We have proved it.” Can they get out of the proof? No;—they may scamper about like the country and city mouse, when disturbed at their feast; but they must surrender at last. “This damned stucco has no chink.” To proceed.—What farther do we prove? There is one link, indeed, deficient in the next piece of evidence. Now, my lords, next to proving any thing most conclusively and distinctly, is, to show how any part of the proof fails, and that we do.

But here I must for a moment stop, to make an observation upon the manner in which the learned counsel have treated me, and the House of Commons in me. Say the learned counsel, “The honourable manager who opened the charges, told you precisely what you would find; and you do find it.—Well, then, will you not acquit lord Melville?” Surely, my lords, I did no more than my duty to the House of Commons, not to overstate their case. Have I brought my proof up to the case I stated?—Entirely. Then I showed, in the outset, more of that impartiality and moderation which is conducive to justice (or rather the Commons showed it in my person), and of that strength of which the learned counsel boast, but which they have not shown, than if I had gone into an extravagant detail, and told you I could prove lord Melville had made so many hundreds of thousands of pounds, or drawn any inference beyond that which the positive proof warrants. But I submit to these remarks also of the learned counsel with pleasure, because they are so many additional symptoms of the weakness of his cause. Cicero, my lords, in laying down his rules for the instruction of a pleader, directs a person, when answering his antagonist, always to omit the strong parts of his argument, and dwell only on the weak. The learned counsel has followed that advice;—nay, he has gone far beyond it; for a great deal of his examination, and much more of his speech, has been out of the case altogether.

I not only opened to your lordships that I should prove lord Melville had taken these



two notes of one thousand pounds each, but also another fact which we have proved, viz. ; that on the 25th of May, 1785, a certain draft was drawn, payable to George Swaffield, by Mr. Andrew Douglas, who, my lords, I beg you to observe, was at that time in a state of health so infirm, that he did not usually fill up the drafts that were drawn in his name, and Mr. Swaffield filled them up for him; but this particular draft Mr. Douglas happened to fill up with his own hand; there is *that* peculiarity in the draft. Mr. Swaffield, a living witness, an old and faithful servant of the Navy-pay-office, now beyond his eightieth year; but with a memory and faculties unimpaired, and an enunciation perfectly intelligible, tells you, upon looking at his books, that this 2,000*l.* never came into his account. Beyond that, we carry the draft to the Bank, we show you, by a living witness, that it was paid in Bank-notes. We then show you that the numerical books of the Bank, for that period, were burnt for want of room; and that the only place in which these Bank-notes would have been recorded, is unhappily destroyed. But we show farther, that on the very same day, two Bank-notes of 1,000*l.* each, were carried to Messieurs Drummond's, on account of lord Melville, by Mr. Douglas. We have proved that it was of importance to the noble defendant to have money paid in upon his account at Drummond's (these private affairs I am sorry I am obliged to relate) and that by that payment he relieved himself from so much interest.

Then are there not two complete positive proofs of pecuniary advantage derived by lord Melville, from the payment of two Bank-notes? Is there not the strongest presumption, short only of the most conclusive proof, that the third payment was in the same predicament? and added to that, have you not the knowledge, from the accounts that are before you, that these payments could not have been made on account of salary, because his salary was all paid up to a fraction, and because you may refer to the navy bills, to which the noble lord might have resorted, to disprove these facts if he could? Navy bills are always drawn in the course of office for the payment of the treasurer's salary.

My lords, a misrepresentation has been made of the evidence given by Mr. Archibald Douglas. Mr. Adam has said, it has been proved to your lordships that Mr. Douglas was lord Melville's private agent. I refer your lordships to the evidence. No such thing is proved. That Mr. Douglas acted only as paymaster for lord Melville, is in proof before your lordships; and that he had no means of paying one single shilling to lord Melville, except for salary, or out of such improper deposits of money as might have been made by desire of the noble defendant. Then another misrepresentation which has pervaded the whole of the argument of Mr. Plumer, and in which he has been followed by

Mr. Adam, is this: they would have you believe that previous to the act, the treasurer had only to apply, and take as much money as he pleased; and that there was no intermediate step. I refer your lordships to the books in evidence before you, and to the history of the period, and you will see that in fact the treasurer could obtain no money of his own mere motion; that he was obliged to go to the Treasury and make application in writing, before any money could be had at all, and the Treasury decided on the propriety of the application. Then they repeat their assertion, that although lord Melville did place the money at Mr. Drummond's, he had a right to put it where he pleased. I must repeat, he had no right to make profit of it: Moreover, that the presumption against him was strong, that it was for corrupt purposes, whenever he put it at any other place than the Bank. First of all, the Bank was, even before this time, the usual place of deposit for all treasurers of the navy; it was the place of deposit for the public cash, when the noble defendant came into the office; it was his own place of deposit up to the time that Mr. Trotter took the paymastership of the navy: And it was never removed by the noble defendant himself, except for corrupt purposes, such as we have proved; or for purposes which he has not attempted to explain. Then we have shown this, that the money was always at the Bank, from the time Mr. Barré was in office; that it was in the Bank during the time lord Melville was in office up to the time of Mr. Trotter's appointment, excepting those sums which were intercepted, and a part of which we bring home to lord Melville's pocket. Is not, then, the presumption strong, that no money was out of the Bank except for illegal, corrupt, and improper purposes? My lords, we then proceeded to show, and we have proved by the balances that were deficient at the Bank, that certain sums of money were not there, which, according to the ordinary routine of office, would have been there, if they had not been in his own pocket, as we have proved respecting some of them, and as we presume of the rest.

I stated to your lordships, in the opening of these charges, that we would show you, most accurately, by the balances at the Bank, and the balances in the hands of the treasurer, that all our inferences, as far as they could be confirmed by official documents, were manifestly true. We have proved that they are so. We sent the noble lord, therefore, out of office, with *differences*, if the learned counsel pleases (we will not quarrel with him for the title, but really they are *deficiencies*, and one might say to him, as Philip did to the persons whom his soldiers would call traitors, "the Commons are apt to call things by their names") to no less an amount than 13,000*l.* We have shown that the differences were increased in the month in which he went out of office, to 23,000*l.* Now, my lords, we have



certainly not been able to prove exactly *how* the debt was increased, but we have proved that it was increased, and we have shown you how it was diminished. We have shown you the diminution, and the means taken to effect it; and have thus established the fact, that the money was gone to private purposes, because it returned from private sources.

I told your lordships, that I thought there was a near road to this proof; and the learned counsel yesterday opened it: he manfully told you, that the 10,000*l.* was gone to Mure and Atkinson's; and that lord Melville had a right to put it there, if he pleased. I say, he had no such right: for, I would ask your lordships—

Mr. Adam.—I never said any such thing.

Mr. Whitbread.—I understood the learned counsel to admit it, and I beg to refer him to the foundation he gave me for this incorrect statement, if it be such. Its foundation was the cross-examination as to the house of Mure and Atkinson, with which he pressed Mr. Callander, to know whether it was a house of credit: and the observation I understood to fall from him yesterday was, that if the house of Mure and Atkinson was a house of credit, lord Melville had a right to put what money he pleased there. I am now under the correction of the learned counsel.

Mr. Adam.—I certainly never did admit that 10,000*l.* had been carried to Mure and Atkinson's. I did state an argument as to the money which had been paid from Mure and Atkinson's to Payne's, and from Payne's to the Bank; and that sum was, I think, 13,000*l.*, or some other sum of money; but I never did admit the fact of the 10,000*l.* having been paid to Mure and Atkinson.

Mr. Whitbread.—The learned counsel is more likely to be right than I am, and I suppose he has made a correct statement. Then we have proved, that after the deficiency had been increased to 23,000*l.* it was again reduced to 7,600*l.* by payment from private sources; we have proved the payment of 1,000*l.* by a person unknown, and of other sums from the hands of Mure and Atkinson, or persons deputed by them to make those payments, on account of the noble defendant.

My lords, it would have been an easy matter for the learned counsel, who examined Mr. Callander as to colonel Dundas's account with the house of Mure and Atkinson, to have shown that the books of Mure and Atkinson were in existence, and *he* might have produced them. Why did he not attempt to disprove any of the facts we have proved? Lord Melville might not have received any interest from the monies so lodged in this house, but he must have received an advantage from them: Is it not an advantage to be able to accommodate a house in large credit, and who might at a particular time be in want of money?—Does a person in a public situation, or who is likely to hold a public situation

hereafter; who has just lost his power, and hopes soon to retrieve it; and who is using every means, proper or improper, lawful or unlawful, to effect his purpose, gain nothing, in point of influence, by lending sums without interest out of the public cash? But there is a difference, the learned counsel say, between treasurership and ex-treasurership, and although the salary might have made a compact binding upon the treasurer, it had made no such compact binding upon the ex-treasurer. Surely, my lords, it will not be allowed, that when a person has entered into a compact to execute the office of treasurer for a certain sum of money, and not to derive profit or advantage from the public money whilst treasurer; the moment he ceases to be treasurer he may derive such profit and advantage. But, it may be said, the care and custody of his ex-treasurership balance may require remuneration. Put it in the Bank;—there it is safe: *that* is the proper depository, and you will be free from care or trouble on account of it.

But then, say the learned counsel, the Bank are making use of the public money all the time; why do you not find the same fault with the Bank that you do with our client?—Are not the Bank a chartered company? do not they pay for their charter? Have they not the legal custody of the public money? and do they not legally use it? Is lord Melville a chartered person, to keep and to use the public money to his own private advantage? The distinction between the Bank and lord Melville is this; that the Bank may, and he may not.

But lord Melville has relieved us from these difficulties, if there be any such, because, in fact, he paid the debt due to his ex-treasurership when he became treasurer again, out of the money which then came into his hands; and I shall presently show the precise time at which he paid the greater part of the debt, amounting to 9,000*l.*, out of the 10,600*l.* with which he has been fixed, in January 1786; and I beg your lordships will observe the distinction I shall attempt to draw, and the proofs by which we have attempted to carry you to these facts. Going out of office on the 10th of April, 1783, debtor to the public in 13,000*l.* increasing his debt at the end of the same month, to 23,000*l.* reducing that debt by the sum of 15,400*l.* before the end of July, and remaining debtor at the end of July in the sum of 7,600*l.* he returned into office in January 1784, owing that sum. I must refer your lordships to one of the operations which took place after he was a second time treasurer of the navy; that of transfers, as we have called them, from the new treasurership to the old, or, more properly speaking, the drawing of drafts upon his new treasurership, and so discharging the debt which was due to the old;—*that* he did to the amount of 6,000*l.* He also took a draft in the name of Mr. Swaffield for 2,000*l.* which never came



into Mr. Swaffield's account; not the one I lately mentioned to your lordships, but one into the proof of which we have not been able to go so far. In this situation the whole debt, except 1,600*l.* having been paid out of the new treasurership, we charge him, at the death of Mr. Douglas, with a debt of 10,600*l.*

My lords, there is another statement made by both the learned counsel, certainly not founded on the evidence before your lordships, which I beg leave to set right. In speaking of the ex-treasurership account, they say, he was always ready to pay in his ex-treasurership balance, but could not if he would. Your lordships will be pleased to observe, that the contrary is in evidence before you. Mr. Bernard Cobbe has proved to your lordships that money may be paid in by a public accountant upon account at any time; and a receipt upon account is always given. And, upon my calling upon Mr. Cobbe by another question, to prove the thing over again that it might not appear in doubt, I was properly stopped by the Court, and told that it was already in evidence. Under that observation so marked, that piece of evidence was recorded; and then the counsel come in the front of the court, and tell you it is proved to be directly otherwise;—surely, my lords, that is sufficient to characterise the whole of the defence.

My lords, the learned counsel finds some fault with the Commons for having exhibited a supplementary article. The truth really is, that the committee, appointed by the Commons to draw up the articles of impeachment, did feel themselves under considerable difficulty upon that head. We obtained Mr. Douglas's papers; and found in those papers what we thought matter of further criminal charge against lord Melville. We thought, indeed, we might have offered that matter in proof under the articles already exhibited: but we also thought it our duty to the House of Commons, which always involves our duty to the defendant, to propose a fresh article, and to state to the House the grounds upon which we founded that article. But I am not surprised that the learned counsel quarrelled with this article, because it has enabled us to go without controversy into proof of matters, the proof of which would otherwise have been contested step by step.—He would have thrown up his intrenchments at York to defend London:—He would have gone to the Land's-end to prevent our making a landing at all; because he knew if we once landed we must conquer.

Upon the subject of the 10,600*l.* there is a substantive article; the first. That article contains a simple statement, that lord Melville declared himself to be possessor of the sum of 10,600*l.*: that he made the declaration in the House of Commons on the 11th of June, 1805, and added that he would not reveal the application of the same, being impelled to concealment by certain motives;

and those motives are stated in the express words of lord Melville, as proved by a witness at your lordships' bar.

My lords, the learned counsel have taken a course useful for their client, but not fair to the memory of the dead: the only one, however, by which they could hope to extricate themselves from the difficulty in which they were engaged. They have said, if the opportunity had not occurred of making a revelation of the destination of a certain sum of 40,000*l.* to the employment of which, as you all know, an uncorrupt minister, who is now departed, was consenting,—what would you have said if you had found lord Melville charged with 60,000*l.* of the public money (for he has avowed the diversion of 60,000*l.* altogether)? What would you, who had for so many years placed your confidence in Mr. Pitt,—you who had for so many years placed your confidence in lord Melville, who was the bosom friend of Mr. Pitt, his political associate, whose union was so strict (mark the emphatical words), that they had, as it were, but one mind;—what would you have said if lord Melville had been accused, and he had held his tongue on the subject of the 40,000*l.*? My lords, lord Melville might have said this, if he would have said no more: “I am a peer of parliament;—the application of that money I cannot reveal; but, on my honour, Mr. Pitt knew it.” And I think there are many persons in whose presence I now speak, who would have been satisfied with that declaration. I am not one of the number.—I might have thought the revelation at all events necessary; not that I think Mr. Pitt would have touched one farthing of the 40,000*l.*; but neither he, nor any other person, however eminent in his situation, however upright, however exulting in the confidence of his country, can be justified in attempting to strain that confidence so far. Was the declaration uttered as if he thought it would be *unfavorable* to his cause?—No, my lords, the expression of unfavorable is applied, for the first time, by his learned counsel; joy elevated his crest—his countenance appeared fraught with the magnanimity of his own resolution: but whom would he not tell?—not the public—not the Commons—not the cabinet—not the king—nay, not even his own mind—Mr. Pitt himself should not know it. If historical relation be true, the effect produced, was that of general consternation:—all were aghast! Some exclaimed, “It was the very infatuation of guilt.” My Lords, if the debates in parliament could be quoted with propriety, and I thought it worth while to trouble your lordships with the speeches of members, I could tell you of comments made upon that declaration in the House of Commons; and, as rumour goes, it was that declaration which decided their vote in the minds of many.

But, my lords, what have we proved beyond that?—We have proved the reason why he did not tell Mr. Pitt; why he did not tell his



own mind, his other self;—it was, that there was nothing to tell:—there was no public service performed; no 10,000*l.* applied. We have traced the public sums in such a way—we have so followed them, as to show you it was impossible that lord Melville could have any secret to communicate.

My lords, I am about to enter on a painful part of my duty; not painful because I am afraid to meet the witness, of whom I am now to speak, in the face, but because it is always painful to speak of one's self. As to the rest, I never saw the man, in my mind's eye, with more satisfaction, than when he was called before this Court.

My lords, you have this declaration proved by a witness, who, when he came into your box, was a credible person. He spoke in the presence of, at least, four hundred others, who might have contradicted him, if what he said could have been contradicted; but not one has been called to disprove his testimony. Who is this witness? He is a manager, a person who has taken the principal lead in the prosecution. Who called him? He was first called to an examination upon other matters; as to the manner of obtaining Mr. Douglas's papers, as if there had been something clandestine and improper in that transaction; and having been so called, he again appeared voluntarily at your bar.

It was said by the learned counsel, that an intention had been announced of calling another witness to the same fact. My lords, it was the intention of the person who offered himself as a witness, to have added a confirming testimony:—that confirming testimony he intended to have derived from the most dignified representative of the people;—most dignified in his official character, and as dignified as any man can be in his private character,—I mean the Speaker of the House of Commons. But when his cross-examination had proceeded some way, he determined that he would not expose the dignity of the chair; for he could not imagine that the counsel had any thing in view but the justice of his cause; or that he would treat any witness that might be called, with more delicacy than the one then before the Court.—If indeed I could quarrel with any thing in the conduct of the learned counsel towards Mr. Whitbread, it would be the severity of his wit. I am sure he will excuse me if I cannot answer him in his own way. The world has been told, by a perfect master of eloquence, that to be an orator, a man ought to possess every qualification. He should be a philosopher, a poet, a statesman, a wit; and should be acquainted, not only with every science, but almost every trade,—When I had once read this passage, I closed the book, lest, by dwelling upon it, I should despair of ever being able to open my mouth in public. But the learned counsel is eminently gifted. What was his plan? From the arts of war we can illustrate what is done in the forum, and in courts of justice. Perhaps

the learned counsel thought that nobody had taken so much pains in this prosecution as myself;—he considered me as acting a part which I really did not fill (true, I have sometimes worn the general's uniform,—but I am not the general); and so he did, what in war is not unfair,—despairing otherwise of the defeat of the army, he attempted to take off the general.—For this purpose he planted himself behind a pamphlet, and aimed a shot at me,—but his piece missed fire. The learned counsel may have recollected, that by a shot, purposely aimed at the immortal Nelson, he lost his life. The gallant Faulkner fell in the same way:—in that glorious profession—

—uno avulso, non deficit alter

Aureus—

A Collingwood succeeds a Nelson; a Northesk to a Collingwood; some illustrious hero succeeds to a Faulkner; and there will always be a succession of such chiefs, each to take the place of the other.

But, I dare say, as soon as the learned counsel sat down, after his notable attempt to destroy me, his learned brother, who knows me a great deal better than he does, pulled him by the sleeve, and said, “Now, do you know, you have been doing a very foolish thing. If you had taken him off, you would have done yourself a great deal of harm; you would have had an abler hand to deal with;” and such, would undoubtedly have been the case.

I have somewhere heard an anecdote of the duke of Marlborough:—In one of his campaigns, a young officer, more full of zeal than discretion, told him, with great eagerness, that he had been very near rendering a most important service to his excellency and the army, for he had very nearly succeeded in taking off the French commander. “If you had,” said the duke, “I would have hanged you,—you could not have done me a greater piece of disservice.” Such would have been the case of the learned counsel in respect of me;—and, I dare say, my friend Mr. Adam told him so: but, really, if they both laid their heads together for this performance, they are no wiser than the girls who killed the old woman's cock, that they might not rise so early in the morning. Here are bells near me, would have rung such a peal in their ears, as to waken them had they been dead.

My lords, if the learned counsel be armed at all points, so are the managers, collectively, too. Do they attack us with law? We have law also. You have heard two of our lawyers. If they attack us with wit, *Anche Noi*,—we have wits too; nay, we have belonging to us the very first wit in the very first line. He ought to be here, but he is not; or I would ask him to

“Lend me one spark of his consuming fire,  
Thoughts that breathe warm, and flashes  
that inspire.”



Ah! the learned counsel would say, still you are no conductor; you cannot use it, you are a non-electric. True, my lords! then I must treat this matter in the dull manner which becomes me. I pardon Mr. Plumer: if there was a reputation to be sacrificed, and it lay between me and his noble client, he could not hesitate. I put myself forward: and if he could, by cross-examination, shake either my credit for veracity, or any little reputation I might possess for common sense; he, perhaps, hoped thereby, to do great good to lord Melville, and I freely forgive him.

But, my lords, cannot I proceed to examine Mr. Whitbread's testimony, in the same manner I would that of any other witness before the Court? And what does it amount to? first, a simple declaration.—Mr. Whitbread says, that lord Melville, on the 11th day of June, 1805, confessed in the House of Commons, that he had taken possession of a certain sum of public money, the application of which he would not reveal, being impelled to do so—I believe that was the awkward expression I used—but being impelled to concealment by motives of public duty, private honour, and personal convenience. An uncontested fact, proved to your lordships: and this fact we charge as a high crime and misdemeanor.

My lords, the witness was cross-examined as to many other parts of the speech, in which this declaration was contained. He was first of all asked, as if he had been a person of great memory (which I know he is not), to repeat the speech which had occupied more than two hours in delivering: and the learned counsel has sarcastically observed, that he verily believed I could have supplied any part of the accounts, if any had been deficient, from memory.—I suppose the next time the learned counsel meets with me in a court of justice, he will say, "Repeat your balances," by way of showing me off. Repeat the speech! No, my lords, I could not repeat the speech; but I told the counsel, if he referred to any part, or passage of the speech, I would tell him whether I recollected it or not. "Did you recollect any passage favorable to lord Melville?" I did not recollect any other particular passage, whether favorable or unfavorable, but I had a perfect remembrance of that which I had stated, and that it was uttered on the 11th day of June. Upon my accurate recollection of the date, the learned counsel was a little severe. It is a day, my lords, henceforth memorable in the annals of this country. But I wish to exculpate the witness from the suspicion of having a convenient memory; and to show your lordships that the 11th of June was a day likely to be strongly imprinted on his memory.

The Romans had a custom in their great families, the observance of which, in the families of this country, might produce admirable effects, of commemorating certain *dies notandi*—days made memorable by the per-

formance of great exploits by their ancestors; and on those days the achievements of their forefathers were held up to the admiration of the children, in order to form them to the execution of those great duties which they would afterwards have to fulfil. Now the 11th of June happens to be a *dies notandus* in the family of the witness. On that day, in the year 1748, his father (with a fortune of about the same amount which Mr. Trotter had when he began the world, viz. 2,000*l.*) set up as a brewer in the city of London. On the 11th of June, in every year, he balanced his accounts, and, by God's blessing, he always found them on the right side; and he early called the attention of his son to that fact; and showed him how, by the quiet progress of uncorrupted industry, a fortune would gradually accumulate. On the 11th of June, 1796, he died: I received his parting blessing, and closed his eyes; and they say, my lords, that when a good man, as he was, dies, the angels in heaven rejoice.—That day then was again strongly imprinted on my recollection. On the 11th of June, 1805, as I was going forth to the House of Commons, to move the vote of impeachment against lord Melville, I happened to see the children with which God has blessed me, and I remarked to them the circumstances that had occurred on that day in our family; and from the day itself, I drew, what in former times would have been called a happy augury; that is, I felt that such events having marked the day on which I undertook this great national work, I ought to exert my utmost ability not to discredit it; and I hope, my lords, the day was not discredited. Such are the reasons for my remembering the 11th of June.—The 8th of April, also, I could not forget, because the 8th of April resounded through the kingdom; and, moreover, I found, in my researches to prepare myself for this business, that on the 8th of April, near two hundred years ago, the earl of Middlesex was impeached for the same sort of offence as that for which the noble lord now appears at your bar. But as to the rest of the days, on which the other important motions were made in the House of Commons, I have tried, but I cannot recollect them.

My lords, the impression made upon the mind of the witness was that which he has stated. As to the substance of the other parts of the speech, he told it as he believed it to be; and when particular expressions, and denials, and averments, on the part of lord Melville, were stated to him, he said, "he believed lord Melville said so." But, my lords, we have disproved those averments of lord Melville. He said he did not know that Mr. Trotter did certain things; and we have proved by Mr. Trotter that he did know it. Upon a review of the whole of this evidence in chief, and the cross-examination, I believe it will amount to this: that lord Melville did make a certain positive declaration in the



House of Commons of a certain fact; that the substance of his speech was to exculpate himself by equivocal expressions; but that he did not positively and directly deny those things, which the learned counsel would fain have made the witness say he did deny.

The learned counsel, in speaking of the witness, got half a word out of his mouth, which he exchanged for another; he would have said he endeavoured to *extort*, but he changed it, for he endeavoured to *draw* from him.—My lords, the witness is of a character not to have things extorted from him if not true, and not to require them to be extorted if true. Having said thus much, to which I have been led by the course of the learned counsel, I can assure him I shall not follow his example, and perpetually recur to Mr. Whitbread. Whatever it may have been in him; in me it will neither be necessary nor decorous. Don't let him be angry with me,

—Ne sævi, magne Sacerdos.

This trial once over,

Discedam; explebo Numerum.—Non reddar tenebris.

So long, not only as the rafters of this hall remain, so long not only as this court shall sit, representing the high criminal judicature of these kingdoms, but even so long as that beam of light which now pierces upon you shall shine; which, as it is an emanation from the first and greatest of created things, so it may truly be considered to represent the eye of God as extended over this assembly; so long as the history of any country and its transactions shall be read in a civilized world, so long shall it be recorded, that the impeachment of lord Melville was voted by the House of Commons, and tried before this court, and so long shall I be carried down to posterity; not in consequence of any exertion, or merits of my own, but because I am joined in this great cause by the men who surround me; because the bright effulgence of their glory will shed some small degree of lustre on a name, even obscure as my own.

My lords, I believe I have gone through the whole of the first and tenth articles: and I am extremely anxious to leave nothing unsaid upon each, in this crisis of the cause. I am bent on speed: and I am sorry to ask your lordships for any indulgence of time. I want it not from failure of bodily strength, nor do I want it for additional preparation; for, as far as I can be prepared, I am, to reply to the whole of the defence; but the extent to which I have already gone, the time which it has occupied—the time which I must still further occupy, and this appearing to be the natural break, I trust your lordships will not think (having to answer a speech of twelve hours in length), that I am unreasonable in requesting you to afford me till to-morrow to proceed.

Adjourned to the Chamber of Parliament.

FIFTEENTH DAY.

Saturday, May 17, 1806.

The lords and others came from the Chamber of parliament, into Westminster Hall, in the same order as on the first day of the trial.

Lord *Chancellor*.—Gentlemen, managers for the Commons, you may now proceed in your reply, and the lords will be pleased to give their attention.

Mr. *Whitbread*.—My lords, in the course of the reply which I had yesterday the honour of addressing to your lordships, I had brought it down to the fixing upon lord Melville, as the Commons contend by evidence irresistible, the possession of a certain sum of 10,600*l.* My lords, I had endeavoured to recollect, and to detail to your lordships, every circumstance of proof which had been adduced to stamp corruption upon the noble defendant. But, in the very minute particularity which was necessary, I find that I have omitted one fact, which I am sure your lordships will now give me leave to supply. I had stated the two notes of 1,000*l.* each;—I had stated the 2,000*l.* draft drawn to Mr. Swaffield; but I had omitted to state that lord Melville had determined the debt, due from some one to the public, to be his own private debt, by a payment out of his own private pocket.

I now call your lordships' attention to that part of the evidence in which Mr. Davies has proved, that he paid into the public account at the Bank the sum of 1,000*l.* being a quarter's salary, and consequently private money, due to the right honourable Henry Dundas in October, 1785. My lords, that furnishes an additional proof, which the Commons have established against him; and which the learned counsel in the course of their defence have not attempted to controvert.

In order to relieve your lordships as much as I can from a recapitulation of all the evidence which it has been necessary to adduce; I beg now to call your attention to the fifth article of impeachment against lord Melville, not having altogether disposed of the first, because it will be necessary in a short time to mention the latter part of the charge in that article; namely, that lord Melville continued in possession of that money after the act had passed; and made an acknowledgment of its being in his possession to a witness who has appeared before your lordships. The fifth article charges a second sum of 10,000*l.* precisely under the same circumstances as the first. That charge is also proved by one witness of credibility, who offered himself to the Court; and upon whom I will not again for one moment dwell.

Now, my lords, the learned counsel for the defendant have contended, that these two sums of 10,000*l.* each (or thereabouts) might have been (one of them asserted that they both were) used for the public service; and they have, in the manner which I had the



honour to state to your lordships yesterday, contended that those two sums were to be put upon the footing of another sum of 40,000*l.* which was avowed by a minister, now no more, and to the employment of which lord Melville was originally moving. If such be the case, that this sum of 40,000*l.* is to give the character of the other two sums of 10,000*l.* each, the illegality of their application is incontestable; because your lordships will see, by referring to the statutes of last year, that the legislature has declared the application of the sum of 40,000*l.* to have been illegal, and that, in consequence of the explanations given it, voted an act of indemnity to the persons who were concerned in the transaction. Now, if this 40,000*l.* was illegally applied, and the two 10,000*l.* stand upon the same footing, they are illegal too. It is only an explanation which could induce your lordships, and the other branches of the legislature, to say that the penalties attached to that illegal conduct should not be inflicted upon the noble lord. He has foregone the time of explanation. We say explanation was impossible; that, according to an homely, but most appropriate phrase used by the learned counsel, it was all a sham; and that there was no application of money for public purposes at all.

My lords, I purposely postpone the confession made to Mr. Trotter, until I shall have an opportunity of saying something in answer to the learned counsel upon the subject of that witness. But there is another matter, upon which, as a member of the House of Commons, it becomes my duty to detain your lordships. After having disposed of that argument of the learned counsel (what weight it may carry with your lordships it is not for me to determine), by which he would show that if you chastise lord Melville by a conviction on this charge, you expose the nation to great risk; because, forsooth, public accountants hereafter will be afraid of serving their country in the way in which lord Melville has served it. As if the receivers of the land-tax, and other persons who carry money to the Bank upon the public account, would be fearful in future of saying, We have disposed of such and such sums, for this, that, or the other public service;—and they have quite as much right to do so as the treasurer of the navy. But, I believe, if the receivers general of the land-tax were to act with the magnanimity and spirit of lord Melville, and tell us they had disposed of the public money in a way which motives of public duty, private honour, and personal convenience, would not suffer them to reveal, they would soon, under an extent from the crown, recover from their reveries in the county gaol. It has been stated by my learned friend, as an aggravation of the offence, that the noble defendant uttered the expressions, attributed to him, “*in the sanctuary of liberty*”—My lords, the expression was most appropriate; for the Com-

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mons contend that their Chamber of Parliament is *the sanctuary of liberty*. They know that that Chamber has been the refuge of liberty in the worst, and her chosen abode in the best of times: and it is not without being offended, that the Commons have heard that expression repeated by the learned counsel with sneer and derision. Such language was emphatically, and dutifully used by the learned manager who summed up the evidence. We know, perfectly well, that the repetition, in certain tones, of the most splendid passages of the purest authors; that the naming in a certain manner, the emblems of majesty, which attach to the king,—the decorations of honour which distinguish your lordships,—may bring them, for a moment, into disrepute among the vulgar; and that, if the learned counsel were to say, in the same sort of sneering tone, the sceptre and the crown, the scarlet of the judges, the ermine of the peers, the stars and garters of the knights, and so forth, he might for a moment bring them all into contempt with unthinking minds.—But, my lords, scarlet clothes the judges, to denote the respect to which they are entitled in the land;—the ermine denotes the purity of noble hearts;—the crown and the sceptre are the insignia of that royal authority, which, together with your lordships and the Commons, form the support of the liberties of this country.—You know that stars are given as the reward of valour, of distinguished personal service, or as the honourable badge of noble families of high estimation and illustrious ancestry;—and, when *the sanctuary of liberty* is mentioned, we the Commons contend, that so mentioned, she has a right to all the respect which can possibly be paid to any great council assembled at any time. We contend, that in the Chamber of the Commons House of Parliament, liberty tends her holy flame; and we the Commons feel that, while such men as he who so properly used that expression shall be found in that house, her flame will not expire. My lords, if it be possible by a deriding tone, to bring so sacred an expression into disrepute, it is equally possible by tones of voice, by a feeling and lofty manner, to add to its intrinsic dignity. Your lordships must recollect the manner in which that expression was uttered.—I could not help immediately reflecting upon the song of the immortal Cowper (more than one Cowper have claims to immortality), and applying his words upon a subject on which he fondly thought the legislature had finally decided:

So sweet was his melody clear,  
That whilst he of liberty spake,  
’Twas liberty only to hear.

My lords, it is by calling to your recollection those tones, by vindicating the expressions used by the learned manager, I am induced to hope, that I put away the reproach cast on the Commons by the learned counsel.



My lords, the learned counsel has thought proper to comment much at large upon the opening description which I had the honour to address to your lordships, of a witness to whom it is now my duty again to call the attention of the Court; I mean Mr. Alexander Trotter. He has said, you have described your witness in most favourable terms (such indeed as became me, because they were the terms which I thought he deserved), and you foretold us precisely every word that Mr. Trotter has said. You told us that Mr. Trotter was a man whom the Court might implicitly believe: you told us he was dignified by every feeling that could mark a gentleman, and with the characteristics of a man of sense; and you added, said the learned counsel (which I did not add), that Mr. Trotter was the only human being who could reveal these transactions to the Court. My lords, I said I had heard him so described; I did not so describe him myself—I mean as to the latter part of the description—"that he was the only human being who could reveal these transactions." My lords, Mr. Trotter, before I saw him, had been represented to me as a man, whose memory was so much impaired by disease, as to render him incapable of giving a distinct account of any transaction of remote date. The reasons which might have induced such representations of him, it is not now for me to canvas; perhaps they might be to show the folly of opening a mouth which, when opened, could not afford any intelligence. But, my lords, upon the examination of Mr. Trotter before the committee, he appeared to be a person quite collected, and capable of giving your lordships the history of his transactions. He detailed them to us in a manner consistent with the appearance he has made here. I do not now mean to call upon you to discredit Mr. Trotter as a witness; but, at the same time, I would have the learned counsel observe, that we understand sufficiently of human nature to know, that not only the words, but the demeanor of the witness,—not only the words and demeanor of the witness, but the words and demeanor of the persons who examine him also, are to be taken into consideration; and when that is done, it is for your lordships to form your opinion upon the result of the testimony which is afforded by all the circumstances and the words put together.

My lords, Mr. Trotter has been represented as a person cruelly persecuted by the committee of managers, in their repeated and harassing examinations and cross-examinations. To Mr. Trotter himself, I would appeal for the truth: and, if the managers for the Commons did in one instance move that the displeasure of the House should be shown against Mr. Trotter, it was when they were compelled by necessity so to do. The effect was produced; Mr. Trotter opened his mouth; and he spoke what I believe to be the truth. My lords, the Commons are vested, as well in the exa-

mination of witnesses, as in every other part of the management of a proceeding like the present, with large and formidable powers. It is the uncontested right of the Commons, pending trial, to examine such witnesses as may or may not have appeared before the Court. But discretion is to be applied to the exercise of that right. A rumour has gone abroad, of which the defenders of the noble lord may wish to avail themselves, that the Commons, in the exercise of their right, have not acted humanely or discreetly towards Mr. Trotter; and it may have been circulated that, after Mr. Trotter had made the long and painful appearance he did before this Court, the committee had summoned him, and subjected him to a further examination of several hours. The fact is this: the committee did summon Mr. Trotter after his examination here, and Mr. Trotter did attend them, but only for two minutes; he was ill, and scarcely a word was said; no examination of any sort took place.

My lords, I have said, that, from the demeanor of witnesses before a court of justice, much may be inferred. In a remarkable case, which, lately occurred in the Court where a noble and learned lord \* now so happily presides, a symptom of horror discovered upon a witness giving testimony, was immediately remarked by one of the ablest and most acute men at the bar, who was counsel in the prosecution; I mean Mr. Garrow, upon the exhibition of a certain paper to Louisa Calderon:† the shrug of horror which she gave at seeing a representation of the instrument of torture with which she had been punished, made it evident to the feelings of every spectator, that the story she told could not be false. You have observed Mr. Trotter, and from that observation I request you to say, whether, with all the disposition to speak the truth which I ascribe to him, it is not evident that there is still a leaning in his mind towards lord Melville, such as from the frailty of human nature he cannot control; a disposition to take upon himself (as the learned counsel has said) all the load of guilt which we charge upon the noble defendant; and in which he was an accomplice. My lords, the learned counsel illustrated Mr. Trotter's conduct by the quotation of a beautiful passage from Virgil: and he told you, that Mr. Trotter stepped forth as Nisus did, to the rescue of his friend Euryalus, exclaiming—

Adsum!

"Adsum qui feci! in me convertite ferrum—"

"Nihil iste nec ausus"

"Nec potuit."——

\* Lord Ellenborough.

† This refers to what has been reported to have taken place on the trial of general Picton in the Court of King's Bench. See the proceedings against that officer in the next Volume.



My lords, I thank him for the application, and would beg him again to refer to the passage. If my memory is not incorrect, he will see, that, taking the whole of the story of Nisus and Euryalus, and attending to all that Nisus said, when he found his friend in the hands of the Rutulians, it is much more applicable to the case of the noble defendant than he has represented it. What is the story? Two soldiers of the army of Æneas had undertaken to perform a secret service in the night: they went into the camp of the Rutulians, slew a great number of the enemy who were asleep, and plundered their camp. On their return, after having satiated themselves with slaughter, they missed their way: one was taken by a patrol of the Rutulians: the other soon after came up unperceived, and saw the danger of his friend, whom the enemy were about to put to death; at this crisis he rushed forth, exclaiming,

*Adsum qui feci!*—

But then the learned counsel left out three remarkable words:

*“Mea fraus omnis;”*

Mine was all the fraud!—Notwithstanding they had both been engaged in this scene of death,

*“Mea fraus omnis!”*

I will take it all upon myself! And why did he take it all upon himself? Because human nature operated strongly upon him, as it has done upon Mr. Trotter;

*“Tantum infelicem nimium dilexit amicum!”*

And so it is here; the debt of gratitude is so great, which Mr. Trotter falsely thinks he owes to lord Melville, that the infirmity of his nature has got the better of his judgment; and he tried to exonerate lord Melville altogether. But the learned counsel,—after extolling Mr. Trotter, and adopting all the language which, I do not deny, I made use of to his advantage;—tells you that he is criminal, perfidious, treacherous; that he has not only neglected his duty, but, by his misconduct, has thrown his patron into the abyss in which they see him plunged. My lords, there are sentences even of just condemnation, which come from the mouths of particular persons, with tenfold severity. I have said, that the conduct of Mr. Trotter in every part of his life was untainted, as far as I was acquainted with it, except in the Navy-pay-office. What tainted his conduct there, was, in my opinion, this: that the moment he entered into the office he found out, or his principal revealed to him, that he was a debtor to the public 10,600*l.*; if Mr. Trotter had not found his principal in that situation, he might have passed even through the Navy-pay-office with a character unstained; but after having been so misled by the noble lord, does it come well from his learned

counsel to charge this man with perfidy and treachery? Perhaps some of your lordships may have read a most affecting tale, told by an ingenious writer, called *“Art and Nature;”* in which an unfortunate woman, who had in early life been led astray, brought, by the commission of one offence, to another and another, comes at last to be tried before the very man by whom she was at first seduced, and by him, upon her conviction, sentence is pronounced against her: she is then made to exclaim, in all the emotions of agony and horror, *“Oh! not from you!”* My lords, Mr. Trotter may well look in the face of that noble lord, when his defenders are accusing him of perfidy and treachery, and also exclaim, *“Oh! not from you!”*

My lords, under what circumstances was the revelation made to that servant of the misconduct of his master? When Mr. Trotter, on the 10th of January 1786, took upon him the paymastership of the Navy, by the appointment of lord Melville, he discovered that the balances were deficient; or lord Melville told him so; it is not perfectly clear which, neither is it material. Mr. Trotter says (and I beg your lordship's attention particularly to this part of his evidence), *“there was no occasion for him to tell me so, for I knew it.”* Now, my lords, Mr. Trotter has generally spoken altogether to words—to what lord Melville said. Has he spoken to signs? To what he understood from lord Melville? He has indeed spoken to different modes of communication, by which he comprehended lord Melville's meaning, and I beg your lordships to reflect, that in the sort of intercourse that passed between these men for so many years, it was absolutely impossible that there should not have been a private understanding of signs; and it is manifest there was so.—In proving this confession or acknowledgment to Mr. Trotter, we have proved the remaining part of the tenth Article. I will briefly recapitulate the proof upon these articles to your lordships. We have proved the 1,000*l.* note at Messrs. Drummonds. We have proved the 1,000*l.* paid to Mr. Newbigging; we have proved the payment of the quarter's salary: we have proved, with the omission of one link of evidence only, the 2,000*l.* drawn to Mr. Swaffield, and paid to Messrs. Drummonds: we have proved illegal drafts drawn upon one treasurership, to pay the debts of the other: we have fixed lord Melville with the sum of 10,600*l.* unaccounted for; and we have proved it by his own acknowledgment. We have also proved the fifth Article, which contains the avowal of the possession of another sum of 10,000*l.*

My lords, the learned counsel, in speaking of the cross-examination of Mr. Trotter, made use of a very happy expression, and to which I beg to call the attention of your lordships:—he called it the popular cross-examination of Mr. Trotter. My lords, no ex-



pression ever uttered by any advocate, in any court of justice, could be more applicable than that to his own performance on that day. It was indeed a popular cross-examination; calculated to mislead the public, but not calculated to shake the examination in chief, or to take off the due effect of the re-examination of the following day. In the course of that popular cross-examination, it was unsuccessfully attempted by the learned counsel, to extort from Mr. Trotter, more conversation than had actually taken place between him and lord Melville. "Are you sure" (I think were the words) "that lord Melville did not tell you that this money was applied to public purposes?" Mr. Trotter answers, "I do not recollect that he told me any such thing; he might have done it; but at this distance of time, I have not the least recollection of it." I hope your lordships will excuse me, if I detain you some little time in referring to particular passages of this examination, and cross-examination, because the learned counsel in the popular speech that he made, in consequence of that popular cross-examination, took particular care to avoid almost all allusion to the evidence, and I do not think he read above one or two extracts from the whole of it; although he made a sort of index to the carelessness of lord Melville, and referred to several different pages upon that head. I refer your lordships to the printed evidence for the question and answer to which I before adverted:—"The first circumstance you were interrogated to, after that of your being appointed paymaster, was, his lordship's acknowledgment of a balance in his hands of 10,000*l.*—At the time lord Melville said that was in his hands, did he not at the same time say it was not applied to any private use or emolument of his own, but to public purposes, from whence it was likely there would be a loss?"—"His lordship expressed to me, he was afraid that there might be a loss; the conversation might be very pointed; but I do not recollect it so much as to be able to say that his lordship actually stated it to be for public purposes, but it is at a very distant period, and it is not impossible he did."\*—But the witness does not undertake to swear that he did, nor has he any recollection upon the subject.

Now, my lords, this 10,600*l.* forms, as your lordships will be pleased to recollect, the first item of a certain account, denominated the Chest Account: and which Chest account, upon a question put by the court, Mr. Trotter says, may have acquired its title by lord Melville's direction. I particularly beg your lordships to attend to that fact; and desire you will do me the honour to carry it in your minds.

This Chest Account contained, then, the 10,600*l.* it contained also the sum of 40,000*l.*; which was money illegally taken; and it was

said this Chest Account consisted altogether of memoranda of money of the same sort. Before I conclude, I shall show your lordships that we have proved not only that those sums were illegally taken, but that they were corruptly taken. In the mean time, however, an act of parliament had passed, containing new regulations for the conduct of the Navy-pay office. That act has been so ably argued, and its true construction so incontrovertibly shown, by the attorney general yesterday, that I should not, for a moment, think of detaining your lordships upon it, were it not merely to observe that the learned counsel, Mr. Adam, founded his hypothesis upon the omission of the principal parts of it: he took two or three separate independent clauses, and left all the rest totally unargued upon, and unexplained. He began with a maxim, a good one, as well in morals, as in the construction of acts of parliament; he told you, as to a particular clause, *noscitur à sociis*. Then why did the learned gentleman immediately take all its companions away from the clause he was upon, and leave us in ignorance of its associates? The learned counsel jumped from one clause to the other, in a most extraordinary manner, leaving altogether out of his consideration, the sixth clause, which orders that the balances shall immediately vest in the successor of the existing treasurer: not that they shall be transferred; but vest. What is the presumption to be inferred from hence? Why, that the Bank alone is allowed to be the banker of the treasurer of the navy.

My lords, I will not say much more upon the act, except this, to take off the effect of a false representation which the learned counsel has made of another part of the case, namely, with regard to the money that is sent to the out-ports; for which the treasurer has been described not to be responsible. My lords, it is no such thing. The treasurer is as responsible for every clerk at the out-ports, as for the clerks in Somerset-place. I will appeal to the little knowledge the noble defendant himself may have acquired of his office since he came out of it, whether that is not the case? I would appeal to other ex-treasurers of the navy, who now hear me, whether it has not been matter of great anxiety to them, to keep down the balances of those out-port clerks, and to send persons down to watch them, and examine the contents of their coffer? Undoubtedly, the balances in the hands of clerks at the out-ports, as well as the balances in the Bank, vest in the hands of the successor; and if the stated balances should not be found at any time to correspond with the balances actually in their hands, the treasurer going out of office, would have to account for the deficiency. Then as to the common sense of the act; if it were really legal for the defendant to authorize Mr. Trotter to do that which he did! supposing a man in trade were to



be treasurer of the navy;—What! might he take any part of the navy money immediately from the Bank to his own house, to carry on his own concerns? Is that contended for? And if he could not do that, how could it be taken to Mr. Coutts's? How could it be taken any where, under any pretence, false or true? and if it were not possible to conduct the Navy-pay-office, without the intermediate agency of such a house as Mr. Coutts's, why was not a law brought in to make such transfer of the cash legal?

My lords, the companions to that clause of the act, which was particularly insisted upon by Mr. Adam, were immediately taken away: but the learned counsel forgot the companions to the act itself. He forgot the Army-pay office act, upon which the Navy-pay office act was founded. For if the treasurer of the navy, under chapter 31 of the 25th of the king, can take the public money and place it where he pleases, the pay-master of the army can do the same; for the acts correspond precisely as far as the Navy-pay office act goes. I beg your lordships to compare the two together, and see whether they do not in fact, exactly tally in all the material enactments.

How has every pay-master construed the act for the regulation of the Army-pay office? Not one of the paymasters of the army has ever thought of withdrawing one shilling from the Bank to an account at a private banker's. The same in the Navy-pay office, with the exception of the noble defendant, who it seems, is to be protected by his negligence and carelessness from all punishment.—It has been said, in his defence, that Mr. Ryder, now lord Harrowby, trusted Mr. Trotter; that Mr. Bathurst trusted Mr. Trotter. No, my lords, they did not trust Mr. Trotter, they trusted lord Melville; and they thought they could safely confide in a man whom he had so long employed.

Let us recollect the history of the times, and as the learned counsel have brought me to the historical facts contained in the tenth report, I will beg your lordships to refer to that report also; you will there see, that as soon as Mr. Ryder discovered that the money was not lodged in the Bank, he said, "I am just come from the office of paymaster of the forces; there I know things were conducted with perfect ease and propriety, according to the provisions of law; why cannot the same be done in the Navy-pay-office?" Mr. Trotter, for reasons which are now perfectly undisguised, told him it could not be. Mr. Ryder, however, was not satisfied with this, and he commenced an inquiry with a view to alterations, which ill health alone prevented his carrying into effect.—He was succeeded by Mr. Bathurst, and he has told your lordships what was his conduct:—he ordered all the money to be placed at the Bank.

Presuming, my lords, not so much upon the

arguments I have brought before your lordships, as upon the acknowledged information and tried ability of the learned manager who argued before your lordships yesterday, who would not risk his former reputation, or the dignity of the place he holds, in maintaining any proposition which he felt to be false; and he having established the truth of his proposition independent of authority;—presuming, I say, that the act is what he construed it, I proceed to inquire before your lordships, what has been the conduct of lord Melville, subsequent to the act,—what our farther articles have charged,—and what proof we have brought of the charges contained in those articles.

Still, my lords, it is necessary to clear away some more of those popular topics upon which the learned counsel so long and so ably dwelt; and to endeavour to remove, if the removal be necessary, from the minds of your lordships, those circumstances which might induce you to suppose that lord Melville ought to be acquitted, in defiance even of the proof of guilt, because in truth he is so negligent a man, that he looks after nothing that concerns the Navy-pay-office, nor ever did. I use the word in the present tense designedly—*looks*, for I will show your lordships hereafter, that if he was inattentive before, he is equally inattentive now.

My lords, the learned counsel have told you, that lord Melville was so careless of all papers that were laid before him, that although he signed them, yet it is in proof he immediately destroyed them. I defy the learned counsel to point out that part in their cross-examination, popular or unpopular, in the examination in chief, or in the re-examination of Mr. Trotter, which justifies that assertion. No:—Mr. Trotter, says he was extremely negligent; but that he always signed two parts of each account. I should be glad to inquire of those learned persons who assist this high court, when called upon, with their judgment, whether, if an account so signed had been brought before any one of them in a civil suit, it would not have been conclusive against lord Melville? It is his act and deed; and by his act and deed he must abide. If those papers would have justified him, why not produce them? Has he burnt them?—Then he burnt them because they would make against him. They were laid before him;—they were signed;—they were left with him;—why did he destroy them? The learned counsel, I believe, did not go so far as to say that Mr. Trotter proved lord Melville was in the constant habit of destroying them.

Mr. Plumer.—Mr. Trotter said he believed lord Melville did not keep his vouchers.

Mr. Whitbread.—I beg the learned counsel will refer me to the passage.

Mr. Plumer.—It is in page 162 of the printed evidence:—"I do not know it, but I believe



lord Melville seldom kept his vouchers at all.\*

Mr. *Whitbread*.—I thank the learned counsel:—"I believe, but do not know—." After that learned gentleman has so often, in correcting us the Commons, said to your lordships, "My lords, let the managers only ask what the witness knows of his own knowledge," and now to produce this to me when I challenge him to find it in the evidence,— "I believe, but I do not know." Oh, my lords! is that the way in which the learned counsel will consult the safety and honour of his client? Again I say, still more established in the position I before took, that Mr. Trotter has given no evidence to that effect; and that it does not appear before your lordships that lord Melville did destroy those papers at the time he took them: and, indeed, he must have been a man more infatuated than his learned counsel would willingly represent him, to have so destroyed them, because they were the only hold he could have upon Mr. Trotter for the faithful settlement of his account.

If Lord Melville can get rid of obligations so binding, on such shallow pretences, there is an end to all your title-deeds. What!—signed in a moment of haste!—I beg pardon; excuse me;—I signed in a hurry; I did not know what I was signing. Here is a deed by which you conveyed to me certain property; don't tell me of your inattention; if you will not immediately do what you ought, I will take you to a court of justice. And what must that court of justice decide? It would be idle to trespass upon your lordships' time any longer.

But even in criminal cases, how does it stand?—If a man has signed his name to a treasonable paper, and that paper be brought against him in a court of justice, the paper not even written with his own hand, but having his signature—could it be explained away by saying he was a hasty, careless, negligent man,—he wrote his name to every thing, or to any thing? I would put it to the noble defendant himself, who, during a long series of years, was the channel of mercy from the throne to the subjects of this country;—and in despite of the language used by the counsel, who vainly imagined they were taking advantage of what I before said in the same strain, I will give credit to the noble defendant for having had pleasure in recommending to his majesty the exercise of the royal mercy;—and I shall not forget an instance wherein I was an applicant for that mercy towards an unfortunate felon, in which the noble viscount conducted himself in a way in which I should wish to conduct myself, could it ever happen to me to be in a similar situation;—but I would put it to him, whether, if a treasonable paper had been brought in evidence against a man and proved by his signa-

ture, and the consequence had been the conviction of the prisoner, would the noble defendant have thought himself justified in an application to the crown for mercy, upon the foolish pretence that the party was not privy to that which he had not signed?—He could not have done it. Are we then to try the noble defendant by rules different from those by which other men are tried for their lives? or are your lordships to exercise equal justice upon him and every other of the subjects of this United Kingdom?

My lords, there are still other topics upon which the learned counsel delight to dwell, and indeed they are delightful; namely, the appeals to your charity! and, when they find a fact too stubborn to be controverted, they say, would any honourable mind, any charitable person, any person out of this Court, think of convicting lord Melville, in his own breast, of proceedings so corrupt? My lords, I love acts of mercy, and should be pleased, in due season, to dwell on the beauties of charity, as much as the learned counsel themselves; but this is not the place where, nor the time when, we can so indulge ourselves. We are now trying the noble defendant upon accusations brought against him;—we say we have established those accusations.—It is not now for you to think of charity;—it is not now for you to think of mercy; it is not for you now to think of any thing but the proof; and, if we have proved our charges, you can have but one course. The learned counsel know *that* likewise; but, in the absence of all stable ground, they are obliged to tread on quicksands, which are every moment failing under their feet.

My lords, the learned counsel then come to the second article, which contains the dry abstract point of law; that Mr. Trotter was permitted by lord Melville to do that which we maintain is contrary to law. Now, that Mr. Trotter acted with the express concurrence of lord Melville, is most indisputable; that he did it to a large extent also. My lords, the learned counsel have talked at times as if we had no evidence upon this subject but Mr. Trotter; forgetting altogether that we have the evidence of lord Melville himself, an uncontroverted witness, one whose testimony cannot be shaken.

My lords, first of all then, we have proved the fact; namely, that Mr. Trotter had obtained that permission from lord Melville. Farther we contend, in the same article, that lord Melville by such permission, put the money beyond his own control, and exposed it to great risk of loss.—Again, we have proved it. We have proved that, by such permission given to Mr. Trotter, without any restriction, not only was it put beyond the control of lord Melville, the treasurer, but that Mr. Trotter, in the exercise of an authority corruptly given to him, put it beyond his own control; that the person to whom he delegated that power might have put it even beyond



his control: and we have proved, by the testimony of Mr. Wilson, that lord Melville knew, not only that it was under Mr. Trotter's exclusive control, but that he (Mr. Trotter) had put it under Mr. Wilson's control. We have proved all this; but then, lord Melville is a man so easily duped:—the governor of India, the secretary of state, the nightly watch, the guardian of the liberties of his country, and the unraveller of all sir Thomas Rumbold's intricate concerns, is so duped, so enchanted by Mr. Trotter, that Mr. Trotter could persuade him to any thing; that he could persuade him, not only that Somerset-house was at a greater distance from the Bank than Broad-street, and therefore the agency of Coutts's house was necessary, but what would be a much more difficult matter, one should think, that Broad-street was at a greater distance from the Bank than Coutts's house in the Strand: and yet, my lords, it is an historical fact, that when he gave Mr. Trotter leave to place the public money at Coutts's, the office was in Broad-street. Your lordships will find Mr. Trotter says, "he *believes* the office had been removed." The reverse is the fact; and although Mr. Trotter may now believe so, I am not bound to give so much credit to Mr. Trotter's memory. I am not bound to believe every thing Mr. Trotter believes, when it is contrary to history and the matter of fact. His recollection fails him here, for the office was really removed in the month of September, 1787, and payments were made into Coutts's early in 1786. The noble lord could *not* be such a dupe as then to believe it was for official convenience; they were within a stone's throw of the Bank.

What then were the official regulations which made it necessary for Mr. Trotter to have money at Mr. Coutts's? None at all. He has not even attempted to establish any. The noble defendant, in his evidence before the naval commissioners, has talked about an opinion, to which he still pertinaciously adhered although he was conscious many sensible persons might differ from him, that official convenience was consulted by this arrangement. In 1804, when he had been four years out of office, and had had frequent opportunities of reconsideration, he still adhered to that opinion.—I wish one could give the noble defendant credit for not having taken up an opinion loosely, to which he so pertinaciously adhered.

Now, I beg to call your lordships' attention to the examination of lord Melville, contained in page 62 of the printed evidence.\* The learned counsel upon this evidence began a course which they thought proper very soon to abandon; and, indeed, to adopt the sort of phraseology used by the learned leader of this defence, it was rather too tough a morsel for them. However, they began the cross exa-

mination of a very able witness, Mr. Sergeant Praed (who appeared before your lordships with the documents containing this evidence of lord Melville) with questions as to the notice lord Melville had had, that he was to be examined, or of the questions that were to be put to him? Whether the questions were put in writing? Whether he had an opportunity of correcting his answers? All which received most pertinent answers from the learned sergeant, who must have shown your lordships, if there were not persons in this court who had been also before those naval commissioners, that they have conducted themselves not only with the most scrupulous vigilance, as respects the public, but with the strictest attention to the justice due to witnesses.

My lords, lord Melville was apprized as early as the beginning of the year 1803, by his conversations with Mr. Trotter, what was the pursuit of the naval commissioners. He was again informed by the precept in the month of June, 1804. His attention was irresistibly called to it; because they had demanded specific records from him, to which I shall have occasion to allude hereafter; and previous to his examination on the 5th of November, 1804, he had a particular precept directed to him, begging him to come to the office of the commissioners on any day convenient to him, which he fixed for the 5th of November; and then he appeared.

At that date, my lords, Mr. Trotter had been under examination for a great length of time; I believe that his first examination had taken place so early as the 8th of June, 1804. Lord Melville had communicated with Mr. Trotter, previous to his coming before the naval commissioners, and he so informed the naval commissioners in a letter which he wrote to them on the 28th of March, in the following year. Mr. Trotter having been so long under examination, and being in habits of intercourse with lord Melville it is impossible that lord Melville could have been ignorant (any more than I was, when I came here, of what I was to speak to), of what he was to speak to, when going before the naval commissioners. But the learned counsel would have you believe, that this unfortunate defendant was taken by surprise; that things were extorted from him, by a sort of *peine dure et forte*, which otherwise he would not have said. If such were their feelings for lord Melville, I think the learned counsel must be ashamed of their own conduct towards the witnesses here. No time given; all upon the alert; and here were witnesses brought out of dark rooms in the city, unhooded on the sudden like hawks, in the full blaze of this tribunal, not with the eyes of hawks themselves, but with the eye of an hawk upon them, and a voice of thunder asking,—What? cannot you cast up these accounts in a moment?—Poor lord Melville! He had his questions put in writing.

\* Page 803.



Did they put their questions in writing to Mr. Edgar? Did they allow him to consult his friends upon them, and come the next day to answer them? Most assuredly not. But the noble defendant *wanted* no such foreknowledge of the questions to be asked; and what was his answer to most of the questions? Why, that most magnanimous answer described by Mr. Adam, "I will not answer you at all; I protect myself under the fifth clause of the act of parliament." My lords, it was not magnanimity, it was refuge. The learned counsel has talked, in some part of his speech of lord Melville's old clothes. This was the old cloak with which he covered himself when he wanted protection, "he cast his auld cloak about him."

He had learnt then, before the end of June, "that Mr. Trotter kept his accounts in a way which made it impossible for him to give lord Melville the accurate information he required; the same reasons," he adds, "render it impossible for me to give you an answer to the question you now put." Again, "he would not be warranted to give this answer," in consequence of the injury he may do the public as well as himself; and that reason operates strongly upon him. But when again pressed, "Upon what ground does your lordship refuse to answer the question?" He says, "Upon the ground that I have already stated, under the fifth clause of the act, 43 Geo. 3rd, cap. 16." "Did you authorize the paymaster?" (Now I beg your lordships to attend to the date stated in this question) "*in or about the year 1786, to draw the money applicable to naval services from the Bank, and lodge it in the hands of a private banker.*" "I cannot precisely fix the time;" he does not, however, deny the date fixed by the commissioners: "but I am certain that *I did permit Mr. Trotter to lodge any money, drawn from the Bank for public purposes, in his private banker's hands during the period it was not demanded to the purposes for which it was drawn.*" Your lordships have it also in evidence from the noble lord, that his permission was given, not only with a view to official convenience, but that Mr. Trotter might make profit and emolument from it. He has no hesitation in saying that, "*he believed and understood he did* (i. e. make profit from it), *and never prohibited him from doing so*; and he believes it was so understood by others at different times, when the establishment of the Navy-pay office was under consideration.

The learned counsel have, for one purpose, adverted to an historical record, and they said, They would have proved it, only it was an historical record, and therefore it was unnecessary to put it in proof. Taking, then, that record as a matter of history, I mean the report of the committee of finance (and the learned counsel derived from those reports abundant reason to praise the noble defendant, and to say that he has acted meritoriously for his country), I must show your lordships, that

it unfortunately happens that every statement made under the authority of the noble defendant before that committee, was false. The persons from the Navy-pay office, who were called before that committee, stated the amount of their salaries, and that they were without the addition of any fee, perquisite, or gratuity whatever; Mr. Trotter amongst the rest: yet the noble lord knew at the time, that he had permitted Mr. Trotter to withdraw the money from the Bank, and that he was making advantage of it. Then he tells the naval commissioners it was so understood by others when the establishment of the Navy-pay office was under consideration. Was it so understood by the committee of finance? If it was, that committee made a false report. Could it have been so understood by the committee of finance? It could not; because all the evidence given before that committee went directly the other way.

The learned counsel have taken another extraordinary ground: and they say, Oh! but *without* this permission, Mr. Trotter could have done the same under his power of attorney. Could have done the same thing!—He could have broken his trust;—which he did not break towards lord Melville. You must, said the learned counsel, in one part of his speech, put trust in man. There must assuredly be confidence in human affairs: and the more trust you place in man, the more he is to be trusted: at least that is the feeling which I wish to encourage in myself. Yet confidence has its limits, and every day affords fresh instances of deceit. But this is the question: if the noble lord had given the power of attorney without his permission added to it, would Mr. Trotter honestly, and with propriety towards his employer, have done that which he did; I contend he could not. I would ask Mr. Latham whether he could honestly have exercised his authority to such a purpose? I would ask Mr. Tierney whether, if Mr. Latham had done so, the moment he had discovered it, he would not have cashiered him, and dismissed him from his confidence for ever?

My lords, if the head of an office be corrupt, the country can have no redress against their servants unless through the load of toil which the Commons have undergone, and the consumption of time they have expended; but if the head of the office be pure, and the subordinates should misconduct themselves, there is an immediate and efficacious remedy; and the noble lord himself had he been pure, would have been able to apply the remedy; which, if Mr. Trotter had so used his power of attorney, it would be fit he should have applied, and which would have operated as an immediate corrective to the abuse.

My lords, that abuses do frequently exist in public offices without the knowledge of the superiors, I admit;—we all know it; but then there is a remedy. Information frequently comes from unsuspected sources. Independ-



dent persons, who know nothing about political arrangements, may happen by accident to have possession of public securities; such, for instance, as belong to the Navy pay-office, and from receiving payment of such securities by drafts upon Coutts's, discover that matters are not properly conducted, and follow up the discovery by giving information of the fact. My lords, I have heard an affecting story of redress given to a great grievance by the means of a very humble instrument. The gaols of this country are now for the most part, such as so enlightened a community would wish to see them; but your lordships well know that, till within a short period of time; the reverse was unhappily the case: and it did happen within the memory of man, that there was, in a remote county a debtor confined in a gaol where the gaoler was brutal, and the place of confinement insecure; the debtor was the object of the gaoler's vigilance, because, in the event of his escape, he became responsible for the debt; and the method which he took to satisfy himself that his charge was safe, was, by chaining him hand and foot on his back to the floor. An obscure person, who happened to visit the unfortunate man in this situation, after revolving in his mind what he should do, made a drawing of him in all his wretchedness, put his name at the head of it, and walked with it to London. He made his way to one of the principal officers of government, and placed this drawing before him. The earthly reward of that man, if he be alive, is in the heaven of his own conscience!—his eternal reward rests with his Almighty Father. His effort had its effect, and redress was immediately obtained; and had this scene of misery been exhibited to the noble defendant himself, no doubt the remedy would have been equally prompt.

Now, suppose the case of an individual discovering an abuse in the Navy-pay-office, and receiving payment for a bill under circumstances, such as I before stated, in perfect ignorance of politics; for such a man may be sufficiently informed to know that there are great officers of government, and what are their duties; he might say, I know that by law the money of the Navy-pay-office ought to be all in the Bank. Here, I have remitted to me a draft upon Messieurs Coutts for a navy bill: I am sure there must be some abuse; the person at the head of the office is a confidential servant of the crown, and certainly would not knowingly permit it. Suppose he had sought out the head of that office, and said, "See how your subordinates conduct themselves:" the answer would have been short, "I know it, and I permit it." Supposing further, that the man, unacquainted with the individuals who filled the offices of state, and impressed with a still stronger notion of the existence of criminality somewhere, had reflected that there was a secretary of state, to whom he might make the case known, and had betaken himself to the se-

cretary of state, unfortunately he would again have met Mr. Dundas, and would have obtained the same answer. Supposing he had heard of another great officer, called the president of the board of control, and gone to him; there also he would have met with Mr. Dundas, but neither attention nor redress. Supposing, then, he had heard that there was a person occupying the first station in government, who had been the king's confidential servant during more than twenty years, and he had said, I will go to that man who I have heard is hereditary and personally uncorrupt. Why, there also he would have met with no redress; for it is a matter of history, that Mr. Dundas had been questioned by Mr. Pitt on the very subject, and had deceived him, and by deceiving him had satisfied him there was no abuse. Is there no disadvantage to the public arising from such things? and, if the noble defendant might do this with impunity, might not every other officer in every department of government do these things? But, I think we cannot fail to have convinced your noble minds he is guilty, when we have proved the second article of charge; that he permitted Mr. Trotter to withdraw the money from the Bank—that he suffered it to be placed beyond his own control, and beyond Mr. Trotter's control, and exposed it to great risk of loss.

Mr. Trotter, it is said, never lost any thing—he was an ingenious and successful man—he never lost by his speculations. If stocks fell, he could keep his stock till the tide changed; and I think the noble defendant has been as fortunate as Mr. Trotter in every case without exception. Your lordships were lately told that the India stock did not immediately rise, and that the three per cents were at one time worse,—that the loyalty was first at a discount, but it so happened, that when the time came to dispose of them all, each bore a premium upon the price it had originally cost. We have heard of a bliss in ignorance, and a folly in wisdom, which is strongly exemplified in the noble lord; it would have been folly for him to have been wise in this matter—his ignorance was most blissful, because it produced to him the fruit of the speculations of his agent.

We do not charge actual loss, but that great risk of loss was incurred; and we prove it by the evidence of Mr. Sprot. Mr. Sprot had purchased for, or had in security from Mr. Trotter, or Mr. Trotter had in his possession, for it matters not which, a large quantity of navy bills, which fell to a discount, so great as to induce him to borrow money to pay the service of the navy rather than sell the bills; Mr. Sprot does not know the amount of the bills, but it may have been very large.

Mr. Trotter has stated himself to have been originally a clerk, at 50*l.* a year,—to have been raised by degrees,—and, at length, to have obtained a fortune of fifty or sixty thousand pounds. Now, if Mr. Trotter had



been obliged to sell those bills at a discount, it is in evidence before your lordships, that he could not, at that time, have made good the difference, and the public must have suffered by his being a defaulter: so that we have proved the money was exposed to risk of loss. The learned counsel with great emphasis says, has the public lost one farthing by this? We do not charge it—what we charged we have proved, and we did not undertake to prove more.

The extent to which the public money was used was from 10,000*l.* to 20,000*l.*, 48,000*l.*, 69,000*l.*, 102,000*l.*, 139,000*l.*, 270,000*l.*, 310,000*l.*, 490,000*l.* and upon going out, to 344,000*l.* Why, my lords, when any man has such a control over public money, is it not evidently exposed to risk of loss?—and in the various channels through which Mr. Trotter was permitted, by this original authority, to let this money pass, was it not put to hazard every day?

The learned counsel in his cross-examination of one of the witnesses, obtained this fact, that lord Melville knew Mr. Trotter had made profit of the money,—and that he had heard lord Melville say (the witness did not assert that lord Melville knew it was so), that the money was made profitable to Mr. Trotter, or, according to the expression of one of the learned counsel, that it had *fructified* for his use in the hands of Messieurs Coutts. But could lord Melville be ignorant, that Mr. Trotter made money in other ways than by a small per-centage on a small balance; when he saw that he had purchased an estate at Dreghorn,—that he lived, not splendidly, but in a comfortable gentleman-like manner, such as might become a man of an income, of two or three thousand pounds a year. Could all this be passing under the eye of the noble defendant, and he suppose that it was all paid out of a salary of 500*l.* 300*l.* from exchequer fees, and a small profit on the money left in Coutts's hands?

I will not fatigue your lordships by going over some of the observations of the learned counsel; their pathetic lamentation over a sailor's widow, who is to carry a half-crown note to the Bank, where she cannot get it changed.—We all know, that since 1797, cash payments can be made at the Bank alone, and therefore, since the year 1797, it was impossible any convenience could result from the use of Mr. Coutts's house, because, from the general prohibition to the Bank to issue specie, it was necessary there should be a Treasury order, to authorize the Navy-pay-office to receive cash at the Bank; nothing but paper then could be had at Coutts's, and cash could be had at the Bank alone. Is it not then the most absurd proposition that ever was entertained by any man in the world?—in the teeth of the evidence they persist in telling you that it was for official convenience the money was lodged at Coutts's, when those unfortunate persons, if they went

to Coutts's, could have nothing but paper, and could have cash only at the Bank. Couple this with the removal of the office from Broad-street, and then ask the noble lord, who was privy to the regulations of the year 1797, whether it be possible he should have been so duped, as to believe, when told, in the first instance, sitting in Broad-street, that it was for official convenience to have the money at Messieurs Coutts's, and to continue of that opinion in 1797, when there was no gold, but at the Bank?—Surely none but a man little above the rank of an idiot, could be so imposed upon:—Lord Melville is a man of a very different stamp, and therefore must be guilty of the charge imputed to him.

I fear I have detained your lordships much too long, but I am desirous that nothing should escape me. I am anxious that every misrepresentation made by the counsel, should be set right, and that the evidence should be stripped of all the extraneous matter cast around it.

My lords, I apprehend I have shown, that we have proved our charges against lord Melville, up to that part of them wherein we impute to him a corrupt participation.—My lords, before I go into that subject, I beg leave to refer your lordships to the opening made by the Commons; and as large passages have been quoted from the speech of the unworthy manager to whom that task was deputed, I beg to state to your lordships what that manager said, which is not exactly what has been said for him.—And here again, I complain of the hardships which the counsel inflict upon me; by giving a false meaning to my words, they wish to make me odious in the end of this prosecution; and to extract from me harsh things relative to lord Melville; such as are not in my heart, such as I do not intend to utter; but many of the sentiments which they impute to me, respecting lord Melville, were not such as I professed towards him myself, but what I said his friends might be allowed to entertain. I gave no opinion of my own. Mr. Adam has told you, I did not call his client avaricious; and he adds, that avarice and profusion are incompatible.—As he has favoured us with some quotations, I would refer him to a description given by a Roman, of a Roman; "*Alieni appetens, sui profusus*:"—and when he imputes to me having said that the noble defendant was not avaricious,—I answer? I charge him not with avarice: but I repeat the sentiment I before uttered, that the desire of acquiring wealth for other purposes than those of mere hoarding, may be more dangerous than the gratification of seeing and handling the coin, in the sordid manner for which there is a madness in some part of mankind.

I certainly did endeavour to remove a general impression, which I thought might have its weight in the minds of some, who would say, as his defenders have actually done, notwithstanding your proof, it is impossible to



believe that a man of the disposition of lord Melville, can have been guilty of these crimes: and in order to show that it was at least possible, I instanced one who had incurred such guilt, between whom and the noble defendant, whatever his acquirements may be, the distance is immeasurable. I told you that lord Bacon had done the same.—Now I beg to read a passage from the works of sir Michael Foster, upon the character of lord Bacon; I wish the words were my own, they so accurately describe my feelings.—He says of lord Bacon, “Avarice, I think, was not his ruling passion, but whenever a false ambition, ever-restless and craving, over-heated in the pursuit of the honours which the Crown alone can confer, happeneth to stimulate an heart, otherwise formed for great and noble pursuits, it hath frequently betrayed it into measures full as mean as avarice itself could have suggested to the wretched animals who live and die under her dominion.—For these passions, however they may seem to be at variance, have ordinarily produced the same effects; both degrade the man; both contract his views into the little point of self-interest, and equally steel the heart against the rebukes of conscience, or the sense of true honour.”\*

It is that passion, so described, which I impute to the noble defendant, and which, notwithstanding the boasted expanse of his mind, has rendered him capable of the acts which the Commons have charged upon him.

My lords, the learned counsel have opened their defence to the remaining charges, by saying, that their magnitude created a necessity for the strictest proof. I think I have shown your lordships, that, up to this moment, the most strict proof that could possibly be required in a case of life and death, has been exhibited; and it fails not to the end.

My lords, the items selected by the solicitor-general are, a certain sum of 14,500*l.* India stock, 10,000*l.* loyalty, 2,000*l.* India, 7,000*l.* three per cent reduced; and these, say the learned counsel, are all: these,

—Rari nantes.

Then there was, it seems, a great gulph of corruption in which these things were swimming. But it was not my learned friend who made that selection; it was they who made it, and we have shown you that there was a constant stream of corruption, flowing, according to the metaphor which the learned counsel has used, from the beginning of lord Melville's administration of the Navy-pay-office, down to the very time when he quitted it. These are only the prominent features in the case; and so prominent are they, that it is impossible your lordships should overlook them. They are of such a character and stamp, like the features in some human faces, that being once seen they can never be forgotten; and having seen, and recorded them

in your memories, you will ever remember that they are the features of lord Melville.

My lords, the observations made by the learned manager who summed up the evidence, upon the transactions in India stock, to the amount of 14,500*l.* are confirmed out of the mouth of Mr. Adam. The learned manager said, that lord Melville was no fair speculator in India stock; that the president of the Board of Control has no right to communicate the feeling he may have of the value of India stock, by making purchases on speculation: and the purchases made in East-India stock for his advantage, were purchases merely upon the speculation of its rise. The prosperity of the affairs of the East India company, you are told, was a favourite topic of conversation with the noble defendant and he was not mistaken in his notion that the company's stock would rise, for the dividends were increased. My lords, we charge, that he took a sum of money from a person (to adopt for a moment, the statement made in his favour) unknown to him: he suffered his estimate of the probable value of India stock to be communicated to one with whom he was unacquainted, to induce that person to lend him money; and upon what security? Upon the security of the stock itself, which (as my learned friend has stated), was such a security as no money-lender would think of advancing money upon. Mr. Adam acknowledges that no man would think of lending money on such security, except to lord Melville; and to such a man, says Mr. Adam, then in the plenitude of his power, confided in by his sovereign, at the head of the Board of Control, resplendent with his various offices, would not any body have lent the money? There is the grievance. If he was the only man who could have obtained money upon such security, he, of all others, ought not to have accepted it. The learned counsel has asserted, quite contrary to the evidence, that Mr. Sprot, who is known to be extremely wary, lent money on the self-same security: but your lordships will recollect, that he had the security of Mr. Robert Dundas by his letters missive, added to the stock.

Then comes another appeal to the feelings of the Court upon the mention of the name of Mr. Robert Dundas. Indeed, indeed, my lords, if I might be permitted, or any thing could be grateful to that gentleman which came from me, I should be one of the first to express my feelings towards him; nothing can be more meritorious, more consolatory to all mankind who have witnessed it, than his conduct towards the noble defendant now in distress. If afflictions can ever produce their own consolations, that is a consolation this affliction has produced to him. I am reminded by it of what I once heard an affectionate father say to his son: “I rejoice that I have been afflicted, for without that affliction, I should not have known your worth.” We are as open as the learned counsel can be

\* Foster's Crown Law, p. 199, 4to. edition.



to all the feelings of humanity, but this is not the time to call them forth; and we must not suffer them to distract the Court.

The learned counsel tell you, lord Melville knew not that Mr. Trotter was the lender of this money from the beginning to the end of the transaction; that we have not shown that he did. I say, from the internal evidence of the thing, he must have known it, and not only from the internal, but from the external evidence also. But then, we must not drop any part of the evidence. From a review of the whole of it, we contend, that it is impossible your lordships should not be convinced, that he must have known Mr. Trotter was the lender.

The learned counsel then say, with an odd tone of triumph, Mr. Whitbread told you the story about the India stock, just as Mr. Trotter has told it. He was very accurate; and he added, that every thing would be confirmed that Mr. Trotter said. Accurate again. Mr. Whitbread did not go one jot further than he knew the witness could go; and from all this, the learned counsel modestly desire the Court to infer that we have disproved our own case. I state the just inference to be that we have proved it. We have proved a most interesting conversation between lord Melville and Mr. Trotter, which your lordships will find in page 122 of the printed evidence. It is very material, that your lordships should attend to the history which Mr. Trotter there gives, in his examination in chief; and that you should observe that it is given in an uninterrupted narrative; that the method in which the manager who examined Mr. Trotter proceeded, was, first of all, to ask Mr. Trotter whether a transaction of that kind ever took place, and when he had said that it did take place, to desire that he would narrate it; and that he did so without interruption.

My lords, one might imagine that the learned counsel who opened this defence had been present, as a little familiar in the corner, at this interview, for he gave a long conversation, well imagined enough, between the principal and his agent.—Surely he was in the closet all the time. But how differently does Mr. Trotter relate the conversation! he says, “I will state the transaction, as far as my memory will carry me, which was in consequence of a conversation I had with his lordship, in which he stated his opinion of the value of East-India stock, from the probable rise that would take place ultimately in that stock;—and I observed to his lordship, that if he was impressed with so good an opinion of that stock,” (and it was a natural way of leading Mr. Trotter to make that observation), “that I thought, in consideration of his own interest, he ought to invest a sum of money in that stock:—his lordship’s observations seemed to throw it aside, by saying that he had no money to invest in stock! I had mentioned to his lordship that there were considerable

balances lying at all times in my hands that were not called for, and, in all probability, would not be called for, from circumstances that I need not, perhaps, relate at this time; but it was money lying unclaimed in my hands, which it would not be necessary to advance to the public, until it was claimed, and there was no prospect of that claim taking place soon; and I advised his lordship to give me leave to lay out so much of that money as would buy about 13,000*l.* or 14,000*l.* East India stock; but which his lordship refused in the most pointed and decided manner, insomuch that I was afraid I had incurred his lordship’s displeasure by proposing it.”\* Now, my lords, having so risked incurring his lordship’s displeasure in proposing it, does this deputy, who, although in the situation of a gentleman, was still lord Melville’s inferior in the office, retire altogether?—Does he refrain from making any other proposition to lord Melville?—No;—he immediately returns to the charge, and tells lord Melville, he has a friend or relation whom he thinks he could persuade to do the thing. Good God, my lords! could any man above the situation and intellect of an idiot, be so imposed upon as to suppose any third person was really intended? Again he says, “he made the matter easy to lord Melville,” that he might be possessed of the stock, and not disappointed in it. Lord Melville having originated the conversation by telling Mr. Trotter his good opinion of India stock; Mr. Trotter immediately taking the hint, and proceeding upon it; lord Melville becoming indignant and rejecting the offer; Mr. Trotter returning to the charge with his friend in his hand; and, as he states, *making the matter easy to his lordship.*

Is there not internal evidence of the nature of the transaction? Has Mr. Trotter told the truth, or is this all sham?—No;—it is the truth; I believe no other words passed between them. But, have we not had evidence of modes of request, in which particular intelligence was conveyed with regard to particular accounts by certain communications?—Have we not sufficient examples, in the intercourse of mankind, of communications made without one word passing. Our own country affords the sublimest master and describer of the passions and feelings of men, and of all their secret turnings and windings: I mean our great dramatic poet: he certainly must have been present at an interview of this kind, to have enabled him to write the admirable scene, wherein John unfolds his murderous purpose to Hubert.

When he had formed his bloody resolution against the unhappy Arthur, and wanted to mould Hubert to the deed; he is introduced as saying,

“Come hither, Hubert! Oh! my gentle Hubert!”



"We owe thee much; within this wall of flesh  
 "There is a soul counts thee her creditor,  
 "And with advantage, means to pay thy love.  
 "If that thou couldst see me without eyes,  
 "Hear me without thine ears, and make reply  
 "Without a tongue, using conceit alone,  
 "Without eyes, ears, and harmful sound of words;

"Then, in despite of broad-ey'd, watchful day,  
 "I would into thy bosom pour my thoughts."—

The desideratum between these two persons was found by lord Melville and his accomplice. Lord Melville intended, and conveyed his intention to Trotter; but no words passed between them: the stock was bought by Mr. Trotter, and "the matter was made easy" to lord Melville. From the internal state of the evidence, it must be so, or lord Melville be reduced to an avowal of this meanness, that he would condescend to accept a favour from some third person to whom he was utterly unknown.—He abandoned his character as a statesman, to be carried into the alley by Mr. Trotter. Who will lend money to buy stock, on the sole security of the stock? None.—Who will do it for lord Melville? All! would be the reply;—and we will at the same time purchase for ourselves; because, if lord Melville is about to speculate in India stock, it will rise.

Then how was the stock afterwards purchased? Mr. Trotter tells you, and, I believe, truly, that he spoke to Mr. Lind, and Lind not being able to make the advances, he used the public money, and charged lord Melville 5 per cent interest upon it, which lord Melville *always* paid. To be sure, after the conversation that had passed between them, it would have been rather too strong for the noble defendant to have said, now you have got this money from your friend, I will not pay any interest for it. This stock afterwards increased to 14,500*l.* It is in proof, that within a specific time, 1,000*l.* out of this 14,500*l.* was transferred into lord Melville's own name: for which he gave no valuable consideration. Then, I ask you all, to put your hands upon your honourable hearts, and declare whether lord Melville could have so degraded himself, as to have accepted the obligation of a thousand pounds stock, given to him by Lind! and whether he must not have known that it was Trotter who was the lender? after this 1,000*l.* stock had been transferred, the debt was diminished by its value, and the proportion of interest was deducted. My lords, the reasoning upon this transaction, appears to me conclusive; but we can carry it still further; and it will not stand upon reasoning alone. When we come to sum up the account, we shall show your lordships that the whole was put at lord Melville's disposal by Mr. Trotter.

There is another transaction in East India stock, which, in the estimation of the Commons, bears very strongly upon this transac-

tion also, and this the learned counsel have almost omitted; I mean the 2,000*l.* India stock. I beg to remind your lordships, that 2,000*l.* was purchased on the 4th of September, 1792, for lord Melville. A question was asked by the Commons, relative to the state of Mr. Trotter's account, at Messrs. Coutts's on the morning of that day; and your lordships were informed by Mr. Chapman, that Mr. Trotter was out of credit in one account, and only 400*l.* or thereabouts in credit on the other: on the two accounts together, he had not a balance of much more than 300*l.*; that Mr. Trotter gave a draft upon the Bank for 8,000*l.* and that the produce of that draft was immediately paid away, in order to purchase 4,000*l.* East India stock; half for Mr. Trotter, and half for lord Melville.—This money having been shown to have been so expended, a question came from the Court, whether Mr. Trotter had not also credit at Messrs. Coutts's for 25,000*l.* in the hands of Mansfield and company at Edinburgh; and whether he could not have drawn for that at any moment? No doubt he could, but then what would have happened? the money in the hands of Mansfield was producing four per cent; if he had drawn, 8,000*l.* out of it, he would have lost four per cent upon 8,000*l.* so that he took a sum out of the Bank from which he was deriving no interest, and made lord Melville gainer upon a part of that sum; taking care that he himself should not lose his four per cent upon any part of the other sum of 25,000*l.*

What are the circumstances, my lords, under which Mr. Trotter describes that he bought this additional 2,000*l.* India stock? the transaction is posterior, and not greatly posterior, to the purchase of stock made by Lind for lord Melville's use. The indignation which lord Melville had expressed, could hardly have been cold in his mind, when he directed Mr. Trotter to do,—what? without saying, "Abstain from the public balances;" without saying, "Have you money to do it yourself? Do not place me in the situation in which you would have placed me before. Do not speculate for me with the public money." No, without a word of that sort, he said to Mr. Trotter that he wanted a *further* qualification in India stock. I beg to refer your lordships to the specific question and answer in page 131. "The first purchase you speak to was 2,000*l.* East India stock, whether after the documents you have seen on the subject, you have now any memory or recollection upon the subject?" "I recollect generally that lord Melville wanted to be possessed of a *further* qualification of East India stock, and he begged me to procure it for him, but whether he told me that he would immediately repay me the money or not, I do not recollect."\*

Now, my lords, how had he *any* qualifica-



tion of India stock? only by the 1,000*l.* which had been transferred into his name by Lind; for which he gave no valuable consideration. He wanted a *further* qualification, and he received it upon the same terms. And then the learned counsel would have you believe that he was totally ignorant of the circumstances of the original purchase. Where is all this indignation gone? All extinguished! not one spark of it remaining. At the best, he condescends in this grovelling manner to take 1,000*l.* from a person unknown to him, and he then takes this further sum of 2,000*l.* East India stock from Mr. Trotter also. Do your lordships want any further proof? one should imagine it almost impossible to fix upon any man by circumstantial evidence any fact, more strongly than this has been fixed upon the noble defendant. But when we come to the close of the scene, we shall show that it must have been brought under his knowledge again. Nay, if he had never known it before, he must have known it then; although, I am sorry to say, the noble defendant has told you, that he never knew it till after the publication of the tenth report.

The next item is the 10,000*l.* loyalty. This 10,000*l.* loyalty was ushered in with great parade. The guards were all out again. The charity of your lordships,—lord Melville's carelessness,—his conduct as a public man—stoppage of the Bank—mutiny in the navy,—famine; all the horrors that can be conjured up, and he the support of the state in the midst of them,—all usher in this 10,000*l.* loyalty. The doors are at length opened, and in walks the patriot, lord Melville, subscribing to a loan for the benefit of his country: and then they bring in to his assistance, most unjustly, his departed friend, Mr. Pitt. But how, in contrast with lord Melville, does Mr. Pitt stand? Can his injured *manes* be at peace, whilst his pretended friends are stabbing his reputation for the purpose of varnishing their own.

It is true Mr. Pitt is on the list of subscribers to the loyalty loan, and for the same amount as lord Melville. Mr. Pitt, like the noble defendant, had not probably a command of money to pay the subscription; but did Mr. Pitt take any part of the public money to pay the instalments on his 10,000*l.* when he was at the *acme* of his power, when there was nothing which stood either before him, or in competition with him, did he, like the noble defendant, take the public money to subscribe to the public? No, he might get it from his private friends, if he thought fit, as a matter of policy, to support that subscription; he might have done any thing, except that which the noble lord did, and to have done that, would to him have been worse than death:—added to which, Mr. Pitt sold his subscription when at a discount; lord Melville kept his at the public expense till it rose to a premium; and then sold it for his own advan-

tage. Hold not up these two men together! No,—hold up one to honour, and the other to conviction for the offence he has committed.

We have then a cavil about words: “Mr. Trotter did not know who ordered the purchase of it.” Why, nobody *purchased* it; it was a subscription, Who subscribed for it in lord Melville's name?—Mr. Coutts. Who paid Mr. Coutts immediately?—Mr. Trotter: as each instalment became due. These payments were entered in one of the accounts kept between them; and these are the accounts of which Mr. Adam and Mr. Plumer says, that though lord Melville signed duplicates, and kept one part, and Mr. Trotter the other, yet, because he was a careless and inattentive man, he ought not to be bound by them. These two accounts I shall have occasion to state presently; and your lordships will find them both so knitted and bound together, by the loyalty loan, as to convict lord Melville, in default of all the other proof that has been adduced.

The 10,000*l.* loyalty having been so bought with the public money, a power of attorney was given to Mr. Trotter to sell it again; and that power of attorney is described as in the nature of a security from lord Melville to Mr. Trotter; but it was only a common power of attorney. They have read it to you. It purports to be for the transfer and sale of stock, and receipt of dividends, in the usual form. At the close of the treasurership, however, we find by a direction given under the hand of the noble defendant to Messieurs Coutts, that it was impossible the stock should be transferred without a special order from him. The loyalty loan fell to a discount, and therefore it is said, the calculation put in by the Commons cannot be in this part correct; but the learned manager who summed up the evidence, has shown distinctly, that, if it did fall to a discount, so much the greater the advantage to lord Melville: because, if he must have sold it at a discount, had he not been enabled to keep it with the public money till it came to a profit, he has received all the advantage not only of positive gain, but of indemnity against loss.

This 10,000*l.* loyalty was carried first to the account current between lord Melville and Mr. Trotter; that account in which Mr. Trotter states himself to have stood between the public and lord Melville. Having been so placed in the account current, and lord Melville, from carelessness or neglect, or what you please, not having repaid to Mr. Trotter any part of the advance, it was transferred to the Chest account. Here Mr. Adam cuts the Gordian knot with a vengeance!—he admits, “Mr. Trotter has proved this,” but he says, “it never went there.” Let him show us the duplicates of the Chest account. No, they are gone; then we will leave his assertion to weigh what it can in the minds of your lordships, against the evidence



of a man, whom he tells you *he* believes, and we are bound to believe. But Mr. Adam's description of this Chest account is of some importance; he says it contained memoranda of public monies; and he says, one of these memoranda was of the sum of 10,600*l.* illegally possessed by lord Melville; another of the sum of 40,000*l.* illegally taken also, as declared by an act of parliament; then comes the 10,000*l.* loyalty, which had passed first into the account current, but settled in the Chest account. It is material to observe, that Mr. Trotter has told you, that the Chest account received its title by lord Melville's direction. These two accounts, with the alteration, were placed before lord Melville. The transaction was recorded upon the face of them both; it forms the bond of union between the two.

My lords, there is another sum which I stated not to have been charged expressly in our articles, the 7,000*l.* reduced. The learned counsel attempted by their cross-examination to show, that this parcel of 7,000*l.* reduced annuities, was not bought with the public money. They say that there were large remittances sent to lord Melville from Scotland at that time. True, there were some remittances; but what was then the state of the Chest account? It was debtor to the public. Therefore, with a sum of money, which came into Mr. Trotter's hand for lord Melville, instead of extinguishing any part of his debt to the public, he bought stock; the profit of which lord Melville received. Now is there the smallest difference whether he bought stock with the public money, or whether he did not pay the public with the money he had in his hand, but purchased stock with it for lord Melville's benefit leaving the account to stand as it did?

My lords, there were other advances made by Mr. Trotter, for lord Melville to pay off debts in Scotland. These advances, it is contended, may have been made at a time when Mr. Trotter was in the receipt of large sums of money, for lord Melville: and very likely they were; but your lordships will again observe, in the evidence of Mr. Trotter, that he carried every thing to the credit of the account current between himself and lord Melville, that he received upon account of the noble defendant; and notwithstanding such credits the account stood against him, and, as we charge, generally in a balance of from ten to twenty thousand pounds; so that it mattered not whether he was in the receipt of money for lord Melville at that particular time or not. You have the evidence of sir William Forbes, Mr. Robert Trotter, and others, to these advances.

I come now to state to your lordships, that we have proved an *account current* kept between lord Melville and Mr. Trotter; and the first item of that account was a sum of 4,000*l.* advanced very early in the intercourse

between them; I mean so early as 1786 or 1787. It is incontestibly proved that this was advanced out of the public money, and specifically out of Exchequer fee money. The bond and obligation which Mr. Trotter took, bore upon the face of it, that it was advanced without interest. Then we are gravely told, lord Melville never read the bond. I will not fatigue your lordships by again urging that point, that lord Melville must be deemed to know his own affairs, like another man, and must be bound by his own signature. This was done when Mr. Trotter had been newly appointed paymaster, and had just ceased to be a clerk at 100*l.* a-year; so that in taking 4,000*l.* of the Exchequer fee money without interest, lord Melville abridged Mr. Trotter's small acknowledged emoluments, in the paltry sum of 200*l.* a-year. This account current was carried on between lord Melville and Mr. Trotter, to the close of their public transactions. The advances made upon it were manifestly of the public money. The chest account was carried down to the same period. These accounts were written in books; those books are destroyed; these accounts were placed upon papers duly signed, and those papers are also destroyed; and all the evidence we can obtain of them, can be from Mr. Trotter, and Mr. Trotter alone.

My lords, I now come to the close of the general account, upon lord Melville's going out of office in the year 1800. Its liquidation was effected as between Mr. Trotter and himself, by the intervention of Mr. Mark Sprot; and the assistance and kindness of Mr. Robert Dundas. I refer your lordships to page 211 of the evidence; you will there find a letter addressed by lord Melville to the house of Coutts, dated in May 1800, directing them to put all his different parcels of stock at the disposal of Mr. Mark Sprot. The order contained in that letter was acted upon; the different stocks were conveyed as security to Mr. Sprot; who advanced money upon *them*, and an additional security given by Mr. Robert Dundas. The advance was made upon the loyalty, upon the 1,000*l.* India, part of the 14,500*l.* India, and the 2,000*l.* India bought in September 1792, and upon the three per cents: making a total advance of 51,000*l.* Mr. Sprot took at the same time the remaining 13,500*l.* of East-India stock. Did lord Melville execute any release of the 13,500*l.*? No paper passed between him and any person respecting it; all was done by signs, but Sprot advanced the money upon it, and that money, together with an addition of which I shall presently speak, made the whole amount to 71,000*l.* These monies went first to the discharge of the Chest account, which was avowedly public money; next, to discharge the balances upon the account current, which were also of public money; and after having travelled through the two accounts, in order the more clearly to prove that they both consisted of public money, they were paid into



the act of parliament, account at the Bank. There is still another feature in this case. There was, in the year 1800, standing at the Bank, in the name of lord Melville, the sum of 5,350*l.* as an ex-treasurership account, which, if tendered at the Exchequer, would at any time have been received, as you have heard from Mr. Cobbe. This further sum of public money was taken out of the Bank by lord Melville, and paid to Mr. Trotter. Mr. Trotter carried it through his account current, and then paid it into the act of parliament account at the Bank also. This sum of 5,350*l.* or thereabouts completed the whole of the balance due, amounting as before stated to upwards of 71,000*l.*

My lords, the accounts of lord Melville's first treasurership having at length come to be audited in the year 1805; the auditors thought proper to make a charge of interest upon him. Lord Melville stated to the Treasury that he ought to be exonerated from that charge, because the money had been either in the Bank of England, or in the hands of his sub-accountant, from the termination of his first treasurership in April 1783, till the close of the second treasurership in 1800. Upon that assertion the lords of the Treasury ordered his *quietus*. Now, I beg to recall the attention of your lordships to the period of 1786, when we prove that 1,600*l.* of that ex-treasurership account was not at the Bank;—to another period, when we prove that only 8*l.* 12*s.* 3*d.* was at the Bank;—and to the books of the sub-accountants at both periods, which show that the money was not with them. The letter to the Treasury is dated in July 1805, when lord Melville's attention had been sufficiently roused to an examination of his accounts, by Mr. Trotter's having abdicated his office of paymaster under Mr. Canning; by the resolutions of the 8th of April; by his having quitted his post as first lord of the Admiralty; by his name having been struck from the list of the privy council; and by the vote of impeachment. Under all these circumstances he made the false assertions, on which the Treasury granted a remission of 4,500*l.* interest, charged on the balance in his hands. My lords, it was material to show this in evidence, as the conclusion of the whole business, as well as for the purpose of proving that lord Melville has not paid any interest to the public for that money.

My lords, it does not appear to me that, on the part of the Commons, I have neglected to press any material point, so far as my ability would enable me, except, indeed, this circumstance with regard to the two accounts kept by Mr. Trotter; of which the balance on the account current was generally, and of the Chest account always, against lord Melville.

There is another charge made by the Commons in their articles, as matter of aggravation against the noble defendant, that Mr. Trotter acted gratuitously in his service: And we have proved that he never received any com-

pensation from his principal. Lord Melville could not have accepted his services upon such terms, if he had not known that Mr. Trotter was remunerated by the use of the public money.

My lords, we have contended that the loan made by Mr. Sprot was for the exclusive benefit of lord Melville: It was in the power of the learned counsel for the defendant to have disproved that fact, if untrue, by the most incontestible evidence.

Further, my lords, the Commons have charged, as criminatory matter against lord Melville, that he destroyed all the papers and vouchers which could have given the history of these accounts.

My lords, your attention should be recalled to the release, which has been given in evidence. You should recollect, that it contains an unusual clause;—that it was drawn by a person, who acted as solicitor to lord Melville, as well as to Mr. Trotter; that it was executed by Mr. Trotter, under impressions that he might be called to account for crimes he had committed in the Navy-pay-office; that it was executed by lord Melville in Scotland, and Mr. Trotter in London; and, that it was prepared at the moment when the precepts, which had been issued from the naval commissioners, received their return. We are then told that lord Melville never looked at this paper; but he signed it; and we have his signature here produced before you. Then comes an argument upon the subject of registration; and an appeal is made to the Court, founded on the good sense of the noble lord. Would he, it is said, for the purpose of concealment, sign a deed which was to be registered? The noble lord knows better. He knows that registration purports not publicity; he knows that the deed itself is *not registered*; and need not be registered till the moment it becomes necessary to act upon it; he knows that, without the clause of registration, it would be no deed at all. So that if they had a deed, they must have had that clause of registration inserted in it. Suppose, again, it were registered; among a million of deeds at a public office, who would go to look for it, or know of its existence? Unless for some special purpose, how could it be come at? It would be no more public there than in the private depositaries of the noble defendant himself. All the argument upon the clause of registration falls to the ground upon the mere explanation of the fact. Again; it is said: Supposing he did destroy the papers, &c. in consequence of this release, he had a right to destroy evidence that would make against himself. Who says he had not? If he were in possession of a Bank note he had forged, and knew the officers of justice to be in pursuit of him, he would put the note in the fire, and there would be an end of it. But is it not to be presumed, from his having destroyed it, that it contained evidence of his guilt? If he destroyed evidence at all would



he destroy evidence of his innocence? Does not the noble lord know that, in the court of Scotland, guilt has always been inferred from the destruction of papers? Does he not know that the lord-advocate, who succeeded him, his friend and near relation, in observing on the circumstance of papers destroyed, positively inferred the guilt of persons who had so destroyed their papers, from their very destruction?

The learned gentlemen on the other side, admit this in civil cases, and that every thing is presumed against a man, who withholds or has destroyed his papers. There is a case where marriage articles had been destroyed, and the man was imprisoned till he admitted that every thing contended for was contained in the instrument. In another case, where papers were suppressed, the man was obliged, even after their production, to abide by the statement made by the other side; merely because he had suppressed the papers; and the court would not look at them, to see their contents.

But has not the destruction of evidence, where a person has been upon a trial for his life, been adduced against him? and has not life been forfeited upon such circumstances? The solicitor-general the other day put an hypothetical case of the destruction of clothes; the learned gentleman affects to turn this into ridicule, and says, would you execute a man upon that single circumstance? No, neither did the learned manager so state it. He said, if such a circumstance were to conspire with other circumstances, it might be material in showing the guilt of the accused. The circumstance did happen, as I have been well informed, not long ago, at the assizes for the county of Surrey; where the destruction of the clothes of a man who was supposed to have committed murder, conspiring with other circumstances, was material in deciding his fate.—But have your lordships forgotten the impression made by the destruction of evidence in a trial, which a few years since created a great sensation in the country? I mean the trial of captain Donellan. Do not your lordships recollect, that because captain Donellan had washed out the phial which was presumed to have contained the poison, in order that the remaining contents of that phial might not be known, Mr. Justice Buller dwelt upon it to the jury, as one of the strong circumstances which should induce them to believe that captain Donellan had been guilty of the murder, because he had destroyed the evidence. Had it been pure water, or any other harmless thing, it would have proved his innocence, and it was presumption of his guilt, that he had thrown it away. There was another trial in the middle of the last century, which also made a great impression at the time—I mean the trial of Miss Blandy,\* for the murder of her father. That unfortu-

nate woman, after she had administered the poison, endeavoured to burn the paper in which it had been contained. It was, however, rescued from the flames: but the inference drawn from her attempt to destroy the paper was, that it contained evidence of her guilt. The counsel who opened the case against her, dwelt much upon the circumstance, and the learned judge, in summing up, took particular notice of it, as conspiring to prove her guilty of the murder.

Then, my lords, you cannot have forgotten the remark of the solicitor-general, that the vouchers destroyed by lord Melville were of infinitely more importance to him, than those destroyed by Mr. Trotter were to him. They were his vouchers against his private agent: and when lord Melville destroyed these papers (if he destroyed them at the time he tells you he did) he left himself without one single voucher, by which he could control Mr. Trotter's accounts. Whether he destroyed them before or after the release, the inference is the same; because, if he destroyed them first, he left himself without witness, and the release was framed as a justification of the act: if he destroyed them after the release, the destruction showed them to be papers bearing evidence of guilt.

My lords, in mentioning to your lordships the account given by lord Melville, in his letter to the naval commissioners, of June the 30th, 1804, that after his return to Scotland, he had, at different times, selected papers for destruction, I would again refer to the argument used by my learned friend behind me. It was upon selection these papers were destroyed. He must have read them, and destroyed those he deemed useless; he must have read them in order to decide upon their value: and what did these particular papers contain? Nothing less than all his money transactions with Mr. Trotter, for a long series of years. Having then inspected, if he will, for the first time, the contents of the Chest-account, the Account Current, and the East-India stock account, he committed them all to the flames. For what purpose? That they might not be brought in evidence against him. When did this happen? Long before the final settlement: for, the final settlement did not take place till February 1803. His letter of June the 30th, 1804, says:—"It is impossible for me to furnish you with the account you ask. It is more than four years since I left the office of treasurer of the navy, and at the period of doing so, having accounted for every sum imprested into my hands, I transferred the whole existing balance to the account of my successor: from that time I never considered any one paper or voucher that remained in my hands, as of the smallest use to myself or any other person;"—that is, from the period of the transfer of balances in 1800. Was the account really settled with Mr. Trotter in 1800? The release is signed in February 1803; the ac-

\* 18 Howell's State Trials, 1117.



counts of the noble defendant's first treasurer-ship had not been given into the office at that time. You have seen by the release, that at that very time, namely, February 1803, the parties declare they have mutually examined all their accounts, and in consequence of that examination, *have* delivered them up or *will* destroy them. "From that time I never considered any one paper or voucher that remained in my hands, as of the smallest use to myself, or any other person; and consequently, being often in the practice, since I retired to Scotland, of employing, occasionally, some time in sorting my papers," (this careless man, habitually occupied in sorting his papers, and of course, reading them for the purpose of assortment,) "I am satisfied there does not exist any one material by which I could make up such an account as you specify." Then all these vouchers of Mr. Trotter were gone; and yet the final settlement did not take place till February, 1803, when the noble defendant was again reluctantly dragged into office. Your lordships will be pleased further to remark, that he arrived in London in the month of April, but the necessity for the release had been so urgent, that it was sent to Scotland, in order to be signed there, although the interval between the execution of the release and the arrival of lord Melville in London was so short. My lords, I think the argument and the proof so complete on this part of the case, that I need not detain your lordships any longer.

My lords, I hope I have omitted nothing in reply to the defence set up by the learned counsel. I hope I have treated nothing unfairly. I protest to you that I have been actuated with a desire to view things with that degree of impartiality, which every man, engaged in such a cause, ought to possess, and with an endeavour to control and curb my feelings, which are undoubtedly strongly impressed with the criminal conduct of the noble defendant.

My lords, something remains to be said upon the mode in which the defence to the charges of the Commons has been conducted. The noble lord abandoned himself to his counsel, and by their defence of him he must now abide, the time is past in which he might have given explanations; and if, as we were told by the learned counsel in the outset of their examinations, when they contested the proof of the warrant under which Mr. Barre received his salary; when they wanted to dispute the history of England; if the noble defendant felt impatience at the mode which they then thought it their duty to adopt, how must his feelings have been tortured during the whole course of this trial! Oh! miserable man! to have been so defended! if he has explanations to give, how must his breast have laboured to tell you what was the application of the two ten thousand pounds! how must his heart have almost

burst its bounds with earnest desire to lay before you the great services he has rendered, in order to receive a verdict of honourable acquittal, and to be restored to the estimation of his country. Having offered to swear to you he made no profit of public money, in the paymastership of Mr. Douglas; when we proved the first, and second Bank-note; when we proved the application of the draft for 2,000*l.*; when we proved the way in which drafts were drawn on the new, to pay debts due to the old account; when we proved his revealing his debt to Mr. Trotter; when we proved that Mr. Trotter was permitted to transfer the money from the place of lawful deposit, for corrupt purposes; when we proved that he was a participator with Mr. Trotter, in the East India stock, in the loyalty loan, in the other India stock, in the 7,000*l.* reduced, and all other various sums; when we proved how he balanced that account at last; when we proved the mode in which he borrowed the money; and when no one witness was called to contradict our proof; if he had within him that which would proclaim his innocence to the world, what agonies must he not have endured! Oh! miserable man, to have been so defended!

The time will soon arrive, when it will become your lordships' duty to pass judgment in this case. My lords, I repeat that the learned counsel on the other side, have done well; they have fought their best fight as they would have done for any individual however mean, whose life, or reputation had been committed to their care: But, my lords, might it not have been expected, from the tone which was taken by those learned gentlemen, that when their client was attacked in his fortress, they would have sallied forth, and repelled the besiegers? That they would have brought an army, to defeat the army arrayed against them? instead of that, they have been trying to escape in every direction, first to the fosse, then to the postern, and if they can but carry off the body of their client, they have left his reputation at the mercy of those who may possess themselves of the fort.—There are times, my lords, when a sovereign himself is called upon to gird on the sword, and march forth to the defence of his dominions; there are others when, through infirmity or infancy, the royal person has been given in charge to the body guard, and it may be then their duty not to fight but to fly: they have fled, they have been pursued, they have been taken, they have been produced, beaten and conquered before this court; and there is but one verdict, which according to the evidence, the Commons feel you can pass upon their devoted client.

My lords, we the managers, have executed a painful task. In the discharge of our duty, we have despised the clamour of party opposed against us; we have contemned the sneers of those who, incapable of acting from any public motive, have ascribed our conduct



to such motives only as would have influenced themselves: but we cannot be insensible to the reproaches which from other quarters may have been thrown upon us; I mean from the numerous friends and connections of the noble defendant; but, my lords, whilst we deplore their injustice, we give due credit to the affectionate feelings in which they have birth.

There is a mode of defence, and there are circumstances, which might make a man like lord Melville, appear to greater advantage under trial, than he ever did in the moment of his highest prosperity, in the plenitude of his power. Persons have been accused; the turn of the times has been against them, popular clamour has unjustly pursued them, and when put to answer at the bar of justice, they have been defended so as to be highly exalted.

My lords, when the learned, the wise, the brave, the generous, the philosophic, (but unhappily incredulous) Julian, was stationed at his favourite Paris, amongst his beloved legions; his weak and suspicious brother attempted to withdraw from him the bands of veterans which surrounded his person, imputing disloyalty to the Cæsar. His affectionate troops, indignant at the injustice of the imputation, placed him upon a shield, and carried him triumphant through their admiring ranks, proclaiming the new Augustus. The foul attempt to degrade him was the means of his greater glory. If indeed, the learned counsel had defended their noble client with the shield of truth, and had afterwards borne him aloft upon its resplendent base, and carried him triumphant through the admiring crowds of his peers, what good heart would not have rejoiced? Nay, subject to the frailties of human nature, which he who denies, is either an hypocrite or a fool, in this box there would have been exaltation at his acquittal: But that he should escape by quirks and quibbles, by low means, and strained constructions, would be a matter of grief to the nation at large, a matter of eventful evil to the most remote posterity.

For the Commons, they have conducted themselves as became so great a body residing in the sanctuary of liberty. My lords, there lived in times more chivalrous than the present, a man of unshaken loyalty, of great exertion, of independent spirit, beloved by his sovereign, and by the people amongst whom he lived, he neither flattered the one nor betrayed the other, he was the chevalier Bayard. That man by the proofs he gave of his valour, and the uncorrupt integrity of his life, obtained the honourable distinction to be called "*Sans Peur, et sans Reproche*:" that distinction the Commons arrogate to themselves in this prosecution; they know that they entered into, and have conducted it without fear, so they trust they have closed it without reproach.

Lord Chancellor.—Mr. Plumer: Their lord-

ships will no doubt be of opinion, that you are now at liberty to address the Court. There are two charges made against the noble defendant, previous to, and subsequent to the act of the 25th of the king. The Commons charge an offence at common law, independently of the provisions of that statute: and they charge other facts as offences against the statute. The managers in their opening (as it was their privilege to do), enlarged upon both the accusations; and you, as counsel for the noble defendant, answered their arguments: the managers for the Commons have replied; and there the proceedings must have closed, had not the positions which they maintained, and which you have controverted, been again insisted upon, on the authority of two cases which the honourable and learned manager yesterday relied on: these cases you would, by the forms of other courts be entitled to observe upon: but though the forms of courts are different, yet as justice must be the same in all places, their lordships will, no doubt, if you claim that privilege, allow you the exercise of it at this moment. You are aware, however, that the privilege is confined strictly to observations upon the cases, and that it does not entitle you to go beyond that which is the fair and liberal scope of an argument upon them. This equally applies to the honourable managers in their privilege of the ultimate reply: their own sense of justice will lead them to observe, that the authority of the court will direct the same limitation to them.

Mr. Plumer.—My lords, after the very great indulgence which the counsel for lord Melville have experienced at your lordships hands, they feel that they should be perfectly unworthy of it, if they were to trespass longer upon your lordships' time than the indispensable discharge of their duty appears to require.

I am perfectly aware of the limitation that is now imposed upon all that it is competent for me to do:—and therefore, my lords, with regard to all the legal argument, that respects the construction of the statute, I feel that it would be improper, and I hope, I am not too sanguine in saying, that I feel it would be unnecessary, to enter upon the arguments, that have been addressed on that part of the subject, and not to leave the case entirely as it now stands before your lordships.

Upon the other part of the case, to which two authorities for the first time have been adduced, on the part of the honourable and learned manager who opened the reply, under your lordships' correction I shall be at liberty to observe upon, and explain the nature of those authorities. At the same time, my lords, I feel that, in saying one word upon that part of the case, perhaps I may again subject the noble defendant to the inferences that are drawn from too anxious a disposition to rest upon any matters of law, as betraying somewhat of distrust and diffidence in the



true merits of this important cause. But knowing, my lords, that I shall not suffer in your lordships minds unjustly from any inference of that nature, though I do not mean to avail myself of the great indulgence your lordships are now pleased to offer, of entering at large, upon that part of the case, I shall do it no more than barely to produce before your lordships, the record in that case that was referred to, being a part of the case that we feel it to be our duty to possess your lordships with; and entirely to leave that part of it, as well as every other, to the decision of your lordships.

My lords, two cases were cited; of the one, the *King v. Munton*,\* I do not recollect that the particulars were stated to your lordships; and therefore I forbear to say any thing. Of the other case, the *King v. Bembridge*, somewhat more was stated by the honourable and learned manager [the attorney-general] who quoted that case. I do not mean to detain your lordships now, with travelling into the argument upon that: all that I shall do, will be to possess your lordships of the facts in that case, and the record upon which the Court pronounced judgment, in order to show that that case undoubtedly bears no fair application to the present. It was a case that came before the court of King's-bench, as the honourable and learned manager stated, upon a question respecting the propriety of the objections made by counsel for the defendant in arrest of judgment. Your lordships well know that, in that stage of the business, the Court were obliged to pronounce upon the case as it stood upon the record.

What the nature of the case therefore was, must appear upon that record. Now, though I have not the least doubt of the correctness of the manuscript reports that were referred to by the honourable and learned manager, yet, in a question of that nature, he will pardon me if I take the liberty of saying, that I should have thought it rather material to have brought before your lordships the terms of the record in a case arising on arrest of judgment; and upon a question whether there was stated upon the record an indictable offence. The honourable and learned manager did not state the record. It so happens, my lords, that I have now in my hand a copy of that record, in which your lordships will see that the case there stated has not the smallest application to the present. I will only very shortly possess your lordships of that record, and, upon the statement of it, will leave the case entirely for your lordships judgment.

This case, which arose in the 23rd Geo. 3rd, was upon an information in the court of King's-bench against a person of the name of Bembridge. The information that I have in my hand contains three counts, and the first of them states these facts.—It states that lord Holland had been paymaster of the

forces, that a variety of accounts of receipts and payments had gone through his hands.—It states that he had gone out of his office without having passed his accounts.—It then states that, after that, a person of the name of Powell being an accountant in the office, and receiver and paymaster-general of the guards, had made up and delivered to the auditor of the imprest the account of lord Holland.—It then states that divers sums of money ought to have been inserted in the said accounts of lord Holland, and delivered in to the auditor as charges upon lord Holland; and it enumerates the several sums, amounting, I think, to what was stated before, 48,000*l.*, which was retained and withheld from the public, but to which the public had a right; but which were not inserted in the accounts. It states that these several sums of money, which ought to be inserted in the accounts, were omitted to be inserted in the accounts as charges on lord Holland, and were not in any manner brought into, or taken notice of in the said accounts, or any of them. It then states that, after the delivery of the accounts of lord Holland to the auditors of imprest, and before the final account was adjusted, the defendant Bembridge, who was an accountant in the office, and held the place of receiver and paymaster of the guards, had continued in that place six years. It then states, that the final account of lord Holland was, and continued, open and unsettled for a long time. That it was the duty of Bembridge to disclose and make known to the auditors of the imprest, to whom the final account of lord Holland had been delivered, any charges upon lord Holland which had been omitted to be inserted in the account, which were within the knowledge of Bembridge; in order that the same might be inserted in the said account: and it then charges that Bembridge, after he became, and whilst he continued accountant as aforesaid, and whilst the final account of lord Holland remained open and unsettled, was requested, by the auditors of imprest, to discover and make known to them any charges upon lord Holland within the knowledge of Bembridge, which ought to have been inserted in the accounts. It then charges that this person well knew that the said several sums of money herein before mentioned to have been omitted in the accounts, and which ought to have been inserted in the accounts, were not included therein, but were omitted to be inserted in the accounts as charges on lord Holland. It then states as a charge against the defendant, that he wrongfully, unjustly, and fraudulently contriving and intending to conceal from the auditor of imprest, to whom the first account of lord Holland was delivered as aforesaid, the said several sums of money which ought to have been charged on lord Holland as aforesaid, and to—(your lordships will have the goodness to attend to these words) and to cheat and defraud our present

\* 1 Esp. N. P. C. 60.



sovereign lord the king, did not at the several days and times when he was so requested, or at any time discover or make known to lord Sondes, the several sums of money which ought to have been inserted, but wickedly, wilfully, fraudulently, knowingly, and corruptly neglected and refused to discover them; and permitted and suffered lord Sondes the auditor, to proceed and close the first account of lord Holland, without the sums having been brought into the same, or made known to lord Sondes, contrary to the duty of him as accountant, to the evil example of others, and the deceit of the king;—What I have stated, particularly constitutes the first count in this information.

I will not proceed to detain your lordships with enumerating the others, because they are in substance the same, with little variations of form, but all that I meant to do, was to possess your lordships of what appears to be the case which came under the consideration of the court of King's-bench; and the only question which the Court had to consider, was whether, supposing all these facts to be true, which your lordships know in that state of the premises they must have been taken to be, whether they do or do not constitute any indictable offence: that is to say, whether a public accountant at the moment of passing his account, with the knowledge of this imposition practised upon the public, withdrawing 48,000*l.* from that account, and doing it for the purpose of cheating and defrauding the king, — whether that was or was not an indictable offence. Your lordships will have very little difficulty in supposing, and I apprehend, will not expect that we admit much when we do not in the least controvert that that was indisputably an indictable offence. This is the only case that is brought before your lordships, the particulars of it were not before stated: I hope I have not detained your lordships improperly, with barely possessing your lordships of what the facts, which constitute that case, are upon this record.

Mr. *Adam*.—I have nothing to add.

Mr. *Attorney General*.—My lords, if the managers for the House of Commons, in the opening of this business, particularly my learned friend who summed up the evidence upon it, did not state any of the circumstances which were afterwards mentioned; and particularly the case to which the learned counsel has just alluded, it was undoubtedly because they thought the law so clear, and incontrovertible, that they could not foresee that it would be disputed. My lords, I shall not add any thing by way of assigning to your lordships any reason for that omission of which the learned gentleman seems to complain.

My lords, in stating the case to your lordships in my reply, I took the liberty of doing it under a perfect conviction that nothing could be so important to the public, as your lordships settlement of the principles laid

down by the learned counsel for the noble defendant; and upon which they sought from your lordships his acquittal.

My lords, it was for that purpose that, amidst a great variety of matter of which I was possessed, my wish to aid your lordships desire to bring this matter to a speedy termination, led me to confine myself to the judgment of the court of King's-bench upon that recent case of the king *v.* Bembridge, and barely to name, which was all that I did, the case which followed, and which occurred in the year 1793, the King *v.* Munton. My lords, I stated the case of the King *v.* Bembridge, not because I supposed, or because I meant to have it understood, that the facts of that case in themselves were specifically the facts which occur in this case, that they were facts exactly and identically of the same description: I possessed the record, having been furnished with the *postea* the evening before, when my determination to trouble your lordships upon this subject was taken. I possessed the *postea*, and had caused an abstract of the first count to be made: That abstract I have now in my hand, and it does not differ very materially from the abstract with which the learned counsel has been furnished. The difference only consists in an omission or two, which I shall point out to your lordships.

Before I do so however, you will permit me to observe, that, in stating the case, I mentioned two of your lordships having been counsel in it. I thought this necessary, because, following up the observations which I made with the information that the case was not in print, it was my duty to enable your lordships to get the best information (which I was satisfied you would obtain) on the subject, in order that you might check or correct any account of it with which I was furnished. I believe your lordships will do me the justice to recollect my having stated that there was not in print any report of that case, but that I was in possession of two manuscript reports of it; my having taken the liberty of reading what I thought material from both those manuscripts; and my having stated not only that the noble lord who now presides in this House was counsel for Mr. Bembridge, but also that the noble and learned lord who lately presided in this House and in the court of Chancery was counsel for the defendant in that case. It is unnecessary for me to add, that that circumstance might enable such of your lordships as think it material to possess yourselves of farther information upon the subject.

The first count in question, besides stating what Mr. Plumer has cited, states that the office of accountant in the paymaster's office, was an office of trust, touching the making up of accounts in the Exchequer; that the accounts of lord Holland had not been made up and delivered to the auditor of imprest, at the time he went out of office; that on the 11th of January, 1782, his accounts were made up,



not by Mr. Bembridge the defendant, but by John Powell, esq. then being accountant in the paymaster's office, and delivered to the auditor of imprest, in order to be settled; that divers sums of money ought to be inserted in these accounts as charges on lord Holland; and then it is stated that before the account was adjusted, Charles Bembridge, esq. became accountant in the office of paymaster, and continued so until the 22nd of February, 1783; that the final account continued unsettled for six years after Mr. Bembridge became accountant; that it was the duty of Mr. Bembridge, as accountant, to disclose to lord Sondes any sums which had been omitted to be charged on lord Holland, in order that the same might be charged. That Mr. Bembridge was requested by lord Sondes, whilst the final account was unsettled, to disclose any sums which had been omitted; that Mr. Bembridge well knew the several sums above mentioned to have been omitted, but fraudulently intending to conceal from lord Sondes the several sums of money above-mentioned, and thereby to defraud his majesty, did not make known to lord Sondes, when he was so requested, such sums, but fraudulently and corruptly permitted him to proceed to close the final account without their being brought into the same.

It may be material, as your lordships may perhaps have occasion to inspect that record, to point out that, in the third count, the word cheat does not occur; and the verdict is a general verdict. Then all who have the goodness to retain any memory of what I took the liberty of stating to your lordships, will recollect that I stated lord Mansfield's judgment, concurred in by the rest of the judges of the King's Bench, expressly for the purpose of proving to your lordships not the facts of the case, but the principles upon which the judgment of the Court proceeded: principles, which I contended for, in all that I submitted to your lordships; and which I thought established by the highest authority, when I found them established by the court of King's Bench, in the judgment of that Court pronounced by lord Mansfield. All I shall take the liberty of reading to your lordships is this short passage (which I shall not now repeat from both the manuscript reports, the reports are concurrent), and I do it in order to justify the managers of the Commons, and satisfy your lordships, that what they undertook to show was, the principle of law, but not the particular case; the omission of public duty, whether accompanied by fraud or not; that the purpose for which this case was cited, was to show that the omission of the discharge of public duty was an indictable public offence; the words which I took the liberty of reading to your lordships, are the words of the noble judge who pronounced the judgment of the Court.—“It is said, this is a mere civil injury, a fraud, a breach of trust, and not indictable; and that there is no pre-

cedent of such an offence being indicted: the law, though explained by particular instances, does not consist in them; but in principles, which govern the Court as they arise, that is, as the instances arise. There are two principles which apply to the present case; first, that where any person accepts of an office of trust and confidence respecting the public, especially when it is attended with profit, he is amenable to the king; and this can only be criminally. This holds by whomsoever or howsoever the officer is appointed; whether appointed by his majesty or appointed by any other authority; there are many offices respecting the public which are not given by the king; for instance, the masters in Chancery.” Then Vidian's Entries 213, is referred to, which is a precedent of an information against the *custos brevium* of the court of King's Bench for losing a roll: “Had it been a steward of a manor, he would have been liable to an action only; but being a public officer, he was prosecuted by information. Secondly, there is another principle; any breach of trust, fraud, or imposition, respecting the king and the public, which between subject and subject would only be actionable, if it concerns the public, is indictable. *There are some authorities for this, though the principle is sufficient, as it is essential to the existence of the country.* In the time of Edward the third, it is clear that an indictment lay for the omission or concealment of a pecuniary duty to the king. Assise 27, Placito 17. Had that been between subject and subject, it would not have been indictable. In 1 Rolle's Reports 2, lord Coke says, If a person collect any thing *pro bono publico*, and do not employ it accordingly, he may be indicted. In 2 Hawkins, 25. sect. 4. the distinction between public and private injuries is clearly taken. In 6 Modern. 96, it is said, any public officer is indictable for misbehaviour in his office; and there is no doubt, that he is a public officer who has so much power over the public revenue.”

My lords, I shall not make any observations upon this, but stop by reading it as I have done before; and by barely adding that my purpose in stating it to your lordships, was not with a view to the facts of the case, but to state this as a text, to show your lordships the principles upon which the court of King's Bench proceed; and for that reason, out of the great number of pages in both manuscript reports which are occupied by this case, I thought myself justified in troubling your lordships with the conclusion of the judgment of lord Mansfield only.

Adjourned to the Chamber of Parliament.

Tuesday, June 3, 1806.

The lords being met in the Chamber of Parliament, the following questions were put to the judges:—



1st. Whether monies issued from the Exchequer to the Governor and Company of the Bank of England, on account of the treasurer of his majesty's navy, pursuant to the act 25 Geo. 3, c. 31, may be lawfully drawn from the said Bank by the person duly authorised by the treasurer to draw upon the Bank, according to the said act, the drafts of such person being made for the purpose of discharging bills actually assigned upon the treasurer before the date of such drafts, but not actually presented for payment before such drawing? and whether such monies, so drawn, for such purpose, may be lawfully lodged and deposited in the hands of a banker, other than the Bank, until the payment of such assigned bills, and for the purpose of making payment thereof, when the payment thereof shall be demanded, or whether such act, in so drawing such monies, and lodging and depositing the same as aforesaid, is in the law a crime or offence?

2nd. Whether monies issued from the Exchequer to the Bank of England, on account of the treasurer of the navy, pursuant to the act 25 Geo. 3, cap. 31, may be lawfully drawn therefrom, by drafts drawn in the name, and on the behalf of the said treasurer, in the form prescribed in the said act, for the purpose of such monies being ultimately applied to navy services; but in the mean time, and until the same should be required to be so applied for the purpose of being deposited in the hands of a private banker, or other private depositary of such monies, in the name, and under the immediate sole control and disposition of some other person or persons, than the said treasurer himself?

Thursday, June 5, 1806.

The lords being met in the Chamber of parliament, the lord chief justice of the court of Common Pleas [sir James Mansfield] delivered the unanimous opinion of the judges upon the first question.

That monies issued from the Exchequer to the Governor and Company of the Bank of England, on account of the treasurer of his majesty's navy, pursuant to the act 25 Geo. 3, cap. 31, may be lawfully drawn from the said Bank, by the person duly authorised by the treasurer to draw upon the Bank, according to the said act, the drafts of such person being made for the purpose of discharging bills actually assigned upon the treasurer before the dates of such drafts, but not actually presented for payment before such drawing, and that such monies, so drawn for such purpose, may be lawfully lodged and deposited in the hands of a banker, other than the Governor and Company of the Bank until the payment of such assigned bills, and for the purpose of making payment thereof, when the payment thereof shall be demanded; and that such act, in so drawing such monies, and lodg-

ing and depositing the same as aforesaid, is not in the law a crime or offence.

Upon the Second Question,—If by the expression “for the purpose of being deposited in the hands of a private banker, or other private depositary,” is to be understood that such was the object or reason of drawing the money out of the Bank of England, the judges answer, that monies may not be lawfully drawn out of the Bank of England by the treasurer of the navy for such purpose, although the money be intended to be, and may in fact be, ultimately applied to navy services. But if, by that expression, it is to be understood, that such intermediate deposit in the hands of a private banker or depositary, is made, *bona fide*, as the means, or supposed means, of more conveniently applying the money to navy services, in that case, the judges answer, that monies issued from the Exchequer to the Bank of England, on account of the treasurer of the navy, pursuant to the act of the 25th Geo. 3, cap. 31, may be lawfully drawn therefrom by drafts drawn in the name, and on the behalf of the treasurer, in the form prescribed by the said act, for the purpose of such monies being ultimately applied to navy services, although in the mean time, and until the same shall be required to be so applied, the money may be deposited in the hands of a private banker, or other private depositary of such monies, in the name, and under the immediate sole control and disposition of some other person or persons than the treasurer himself.

Friday, June 6, 1806.

The lords being met in the Chamber of Parliament, the following question was put to the judges

3. Whether it was lawful for the treasurer of the Navy, before the passing of the act of 25 Geo. 3rd, c. 31, and more especially, when by warrant from his majesty, his salary, as such treasurer as aforesaid, was augmented in full satisfaction for all wages, fees, and other profits and emoluments, to apply any sum of money imprested to him for navy services, to any other use whatsoever, public or private, without express authority for so doing; and whether such application by such treasurer, would have been a misdemeanor, or punishable by information or indictment?

Monday, June 9, 1806.

The lords being met in the Chamber of Parliament, the lord chief justice of the Court of Common Pleas delivered the unanimous opinion of the judges upon the third question.

That it was not unlawful for the treasurer of the Navy, before the act 25th Geo. 3rd, c. 31, although after the warrant stated in the question, to apply any sum of money im-



prested to him for navy services, to other uses, public or private without express authority for so doing, so as to constitute a misdemeanor punishable by information or indictment.

## SIXTEENTH DAY.

Thursday, June 12, 1806.

The lords and others came from the Chamber of Parliament into Westminster-hall, in the same order as on the first day of the trial.

*Lord Chancellor*.—My lords, your lordships having fully heard and considered of the evidence and the arguments in this case have agreed upon several questions, which are severally to be put to your lordships, and the first question is this:—

Is Henry viscount Melville guilty of the high crimes and misdemeanors charged upon him in the First Article of the impeachment or not guilty?

*John lord Crewe*, what says your lordship on this First Article?

Whereupon *John lord Crewe*, standing up, in his place, uncovered, and laying his right hand upon his breast, answered—Not Guilty, upon my honour.

In like manner, the several lords, after mentioned, being all that were present, answered as follows:—

*James Lord Lauderdale*—Guilty, upon my honour.

*Charles Lord Barham*—Not Guilty, upon my honour.

*John Lord Sheffield*—Not Guilty, upon my honour.

*Charles George Lord Arden*—Not Guilty, upon my honour.

*Edward Lord Ellenborough*—Not Guilty, upon my honour.

*Murrrough Lord Thomond*—Not Guilty, upon my honour.

*Alleyne Lord St. Helens*—Not Guilty, upon my honour.

*John Joshua Lord Carysfort*—Not Guilty, upon my honour.

*John Lord Eldon*—Not Guilty, upon my honour.

*Thomas Lord Lilford*—Not Guilty, upon my honour.

*John Lord Northwick*—Not Guilty, upon my honour.

*Gilbert Lord Minto*—Not Guilty, upon my honour.

*Thomas Lord Bolton*—Not Guilty, upon my honour.

*Charles Lord Bayning*—Not Guilty, upon my honour.

*Robert Lord Carrington*—Not Guilty, upon my honour.

*John Lord Rolle*—Not Guilty, upon my honour.

*Edward Lord Harewood*—Not Guilty, upon my honour.

*Francis Lord De Dunstanville and Bassett*—Not Guilty, upon my honour.

*John Christopher Lord Dawson*—Guilty, upon my honour.

*Francis Lord Stuart, of Castle Stuart*—Not Guilty, upon my honour.

*Charles Lord Yarborough*—Not Guilty, upon my honour.

*Thomas Lord Dundas*—Not Guilty, upon my honour.

*Orlando Lord Bradford*—Not Guilty, upon my honour.

*Henry Lord Mulgrave*—Not Guilty, upon my honour.

*John Lord Upper Ossory*—Not Guilty, upon my honour.

*William Lord Auckland*—Not Guilty, upon my honour.

*George Lord Douglas of Lochleven*—Not Guilty, upon my honour.

*Henry Lord Gage*—Not Guilty, upon my honour.

*Archibald Lord Douglas of Douglas*—Not Guilty, upon my honour.

*James Bucknell Lord Verulam*—Not Guilty, upon my honour.

*James Lord Fife*—Not Guilty, upon my honour.

*William Lord Amherst*—Not Guilty, upon my honour.

*Richard Lord Braybrooke*—Not Guilty, upon my honour.

*George Lord Kenyon*—Not Guilty, upon my honour.

*Robert Lord Hawkesbury*—Not Guilty, upon my honour.

*Henry James Lord Montagu*—Not Guilty, upon my honour.

*Thomas Lord Berwick*—Not Guilty, upon my honour.

*John Lord Boringdon*—Not Guilty, upon my honour.

*John Lord Sommers*—Not Guilty, upon my honour.

*Thomas James Lord Bulkeley*—Not Guilty, upon my honour.

*John Lord Elliot*—Not Guilty, upon my honour.

*Francis Lord Rawdon*—Not Guilty, upon my honour.

*George Lord Rodney*—Not Guilty, upon my honour.

*William Lord Grantley*—Not Guilty, upon my honour.

*George Talbot Lord Dynevor*—Not Guilty, upon my honour.

*Henry Richard Lord Holland*—Guilty, upon my honour.

*Frederick Lord Boston*—Not Guilty, upon my honour.

*Thomas Philip Lord Grantham*—Not Guilty, upon my honour.

*Frederick Lord Ponsonby*—Guilty, upon my honour.

*Peter Lord King*—Guilty, upon my honour.

*Thomas Robert Lord Hay*—Not Guilty, upon my honour.



*William Shaw Lord Cathcart*—Not Guilty, upon my honour.

*George Lord Ashburnham*—Not Guilty, upon my honour.

*John Lord Clifton*—Not Guilty, upon my honour.

*George Lord Spencer of Wormleighton*—Not Guilty, upon my honour.

*St. Andrew Lord St. John of Bletsoe*—Guilty, upon my honour.

*Edward Lord De Clifford*—Guilty, upon my honour.

*John [Buckner] Lord Bishop of Chichester*—Not Guilty, upon my honour.

*Richard [Beadon] Lord Bishop of Bath and Wells*—Not Guilty, upon my honour.

*Samuel [Horsley] Lord Bishop of St. Asaph*—Not Guilty, upon my honour.

*William Viscount Lowther*—Not Guilty, upon my honour.

*Thomas Viscount Hampden*—Not Guilty, upon my honour.

*Thomas Viscount Wentworth*—Not Guilty, upon my honour.

*Henry Viscount Hereford*—Not Guilty, upon my honour.

*Charles William Earl of Charleville*—Not Guilty, upon my honour.

*Edward Earl of Powis*—Not Guilty, upon my honour.

*Edmund Henry Earl of Limerick*—Not Guilty, upon my honour.

*Thomas Earl of Chichester*—Not Guilty, upon my honour.

*George Earl of Onslow*—Not Guilty, upon my honour.

*James Earl of Rosslyn*—Not Guilty, upon my honour.

*Dupré Earl of Caledon*—Not Guilty, upon my honour.

*Richard Earl of Donoughmore*—Not Guilty, upon my honour.

*Richard Earl of Lucan*—Not Guilty, upon my honour.

*John Willoughby Earl of Enniskillen*—Not Guilty, upon my honour.

*Thomas Earl of Longford*—Not Guilty, upon my honour.

*George Frederick Earl of Westmeath*—Not Guilty, upon my honour.

*Henry Earl of Caernarvon*—Guilty, upon my honour.

*David William Earl of Mansfield*—Not Guilty, upon my honour.

*Edward Earl of Digby*—Not Guilty, upon my honour.

*Hugh Earl Fortescue*—Not Guilty, upon my honour.

*Richard Earl of Mount Edgecumbe*—Not Guilty, upon my honour.

*John Earl Strange*—Not Guilty, upon my honour.

*John Jeffreys Earl Camden*—Not Guilty, upon my honour.

*Robert Earl Grosvenor*—Not Guilty, upon my honour.

*Henry Earl of Uxbridge*—Not Guilty, upon my honour.

*Henry Earl Bathurst*—Not Guilty, upon my honour.

*John Earl of Chatham*—Not Guilty, upon my honour.

*Jacob Earl of Radnor*—Not Guilty, upon my honour.

*Philip Earl of Hardwicke*—Not Guilty, upon my honour.

*George Earl of Egremont*—Not Guilty, upon my honour.

*Robert Earl of Buckinghamshire*—Not Guilty, upon my honour.

*James Earl Graham*—Not Guilty, upon my honour.

*George Earl of Macclesfield*—Not Guilty, upon my honour.

*Charles Earl Stanhope*—Guilty, upon my honour.

*Peter Earl Cowper*—Not Guilty, upon my honour.

*Frederick William Earl of Bristol*—Not Guilty, upon my honour.

*Edward Earl of Oxford and Earl Mortimer*—Guilty, upon my honour.

*George Earl of Glasgow*—Not Guilty, upon my honour.

*John Earl of Stair*—Not Guilty, upon my honour.

*John Earl of Breadalbane*—Not Guilty, upon my honour.

*George Earl of Aboyne*—Not Guilty, upon my honour.

*Thomas Earl of Kellie*—Not Guilty, upon my honour.

*John Earl of Strathmore*—Not Guilty, upon my honour.

*Henry Earl of Doncaster*—Not Guilty, upon my honour.

*Frederick Earl of Carlisle*—Not Guilty, upon my honour.

*George Earl of Essex*—Not Guilty, upon my honour.

*George Earl of Winchelsea and Nottingham*—Not Guilty, upon my honour.

*John Earl of Westmoreland*—Not Guilty, upon my honour.

*John William Earl of Bridgewater*—Not Guilty, upon my honour.

*John Earl of Suffolk and Berks*—Not Guilty, upon my honour.

*Edward Earl of Derby*—Not Guilty, upon my honour.

*George Earl of Dartmouth*, lord chamberlain of the household—Not Guilty upon my honour.

*Heneage Earl of Aylesford*, lord steward of the household—Not Guilty, upon my honour.

*Thomas Marquess of Headfort*—Not Guilty, upon my honour.

*Francis Marquess of Hertford*—Not Guilty, upon my honour.

*Charles Marquess Cornwallis*—Not Guilty, upon my honour.



*John James Marquess of Abercorn*—Not Guilty, upon my honour.

*James Marquess of Salisbury*—Not Guilty, upon my honour.

*Charles Marquess of Winchester*—Not Guilty, upon my honour.

*John Henry Duke of Rutland*—Not Guilty upon my honour.

*Aubrey Duke of St. Albans*—Not Guilty, upon my honour.

*Henry Charles Duke of Beaufort*—Not Guilty, upon my honour.

*Edward Adolphus Duke of Somerset*—Not Guilty, upon my honour.

*Charles Duke of Norfolk*, earl marshal—Guilty, upon my honour.

*Henry Viscount Sidmouth*, lord privy seal—Not Guilty, upon my honour.

*William Earl Fitzwilliam*, lord president of the council—Guilty, upon my honour.

His Highness, *William Frederick Duke of Gloucester*—Guilty, upon my honour.

His Royal Highness *Adolphus Frederick Duke of Cambridge*—Not Guilty, upon my honour.

His Royal Highness *Augustus Frederick Duke of Sussex*—Guilty, upon my honour.

His Royal Highness *Ernest Augustus Duke of Cumberland*—Not Guilty, upon my honour.

His Royal Highness *Edward Duke of Kent*—Not Guilty, upon my honour.

His Royal Highness *William Henry Duke of Clarence*—Guilty, upon my honour.

His Royal Highness *Frederick Duke of York*—Not Guilty, upon my honour.

Lord Chancellor, And I, Thomas lord Erskine, am of opinion, that Henry viscount Melville is Not Guilty of this first article of the impeachment, upon my honour.

Then, after proclamation for silence, the Lord Chancellor said, the second question I am to put to your lordships is this:—

Is Henry viscount Melville guilty of the high crimes and misdemeanors charged upon him, in the second article of the impeachment—or not guilty?

And after a similar proclamation for silence, between putting the question on each article, observing the same form throughout the ten articles, ending with his own opinion.

The opinions delivered by their lordships in answer to the several questions were as follow:







|                                                                      | 1st  | 2nd  | 3rd  | 4th  | 5th  | 6th  | 7th  | 8th  | 9th  | 10th |
|----------------------------------------------------------------------|------|------|------|------|------|------|------|------|------|------|
| Edmund Henry Earl of Limerick .....                                  | N.G. | N.G. | N.G. | N.G. | N.G. | N.G. | N.G. | N.G. | N.G. | N.G. |
| Thomas Earl of Chichester .....                                      | N.G. | N.G. | N.G. | N.G. | N.G. | N.G. | N.G. | N.G. | N.G. | N.G. |
| George Earl of Onslow .....                                          | N.G. | N.G. | N.G. | N.G. | N.G. | N.G. | N.G. | N.G. | N.G. | N.G. |
| James Earl of Rosslyn .....                                          | N.G. | G.   | G.   | N.G. | N.G. | G.   | G.   | N.G. | N.G. | N.C. |
| Dupré Earl of Caledon .....                                          | N.G. | N.G. | N.G. | N.G. | N.G. | N.G. | N.G. | N.G. | N.G. | N.G. |
| Richard Earl of Donoughmore .....                                    | N.G. | G.   | G.   | N.G. | N.G. | G.   | G.   | N.G. | N.G. | N.G. |
| Richard Earl of Lucan .....                                          | N.G. | N.G. | N.G. | N.G. | N.G. | N.G. | N.G. | N.G. | N.G. | N.G. |
| John Willoughby Earl of Enniskillen .....                            | N.G. | N.G. | N.G. | N.G. | N.G. | N.G. | G.   | N.G. | N.G. | N.G. |
| Thomas Earl of Longford .....                                        | N.G. | N.G. | N.G. | N.G. | N.G. | N.G. | N.G. | N.G. | N.G. | N.G. |
| George Frederick Earl of Westmeath .....                             | N.G. | N.G. | N.G. | N.G. | N.G. | N.G. | N.G. | N.G. | N.G. | N.G. |
| Henry Earl of Caernarvon .....                                       | G.   | G.   | G.   | N.G. | N.G. | G.   | G.   | G.   | N.G. | N.G. |
| David William Earl of Mansfield .....                                | N.G. | G.   | G.   | N.G. | N.G. | G.   | G.   | N.G. | N.G. | N.G. |
| Edward Earl of Digby .....                                           | N.G. | N.G. | N.G. | N.G. | N.G. | N.G. | N.G. | N.G. | N.G. | N.G. |
| Hugh Earl Fortescue .....                                            | N.G. | N.G. | N.G. | N.G. | N.G. | N.G. | N.G. | N.G. | N.G. | N.G. |
| Richard Earl of Mount Edgecumbe .....                                | N.G. | N.G. | N.G. | N.G. | N.G. | N.G. | N.G. | N.G. | N.G. | N.G. |
| John Earl Strange .....                                              | N.G. | N.G. | N.G. | N.G. | N.G. | N.G. | N.G. | N.G. | N.G. | N.G. |
| John Jeffreys Earl Camden .....                                      | N.G. | N.G. | N.G. | N.G. | N.G. | N.G. | N.G. | N.G. | N.G. | N.G. |
| Robert Earl Grosvenor ..                                             | N.G. | G.   | G.   | N.G. | N.G. | G.   | G.   | N.G. | N.G. | N.G. |
| Henry Earl of Uxbridge .....                                         | N.G. | N.G. | N.G. | N.G. | N.G. | N.G. | N.G. | N.G. | N.G. | N.G. |
| Henry Earl Bathurst .....                                            | N.G. | N.G. | N.G. | N.G. | N.G. | N.G. | N.G. | N.G. | N.G. | N.G. |
| John Earl of Chatham .....                                           | N.G. | N.G. | N.G. | N.G. | N.G. | N.G. | N.G. | N.G. | N.G. | N.G. |
| Jacob Earl of Radnor .....                                           | N.G. | G.   | G.   | N.G. | N.G. | G.   | N.G. | N.G. | G.   | N.G. |
| Philip Earl of Harwicke .....                                        | N.G. | N.G. | N.G. | N.G. | N.G. | N.G. | N.G. | N.G. | N.G. | N.G. |
| George Earl of Egremont .....                                        | N.G. | G.   | N.G. | N.G. | N.G. | N.G. | N.G. | N.G. | N.G. | N.G. |
| Robert Earl of Buckinghamshire .....                                 | N.G. | G.   | N.G. | N.G. | N.G. | N.G. | N.G. | N.G. | N.G. | N.G. |
| James Earl Graham .....                                              | N.G. | N.G. | N.G. | N.G. | N.G. | N.G. | N.G. | N.G. | N.G. | N.G. |
| George Earl of Macclesfield .....                                    | N.G. | N.G. | N.G. | N.G. | N.G. | N.G. | N.G. | N.G. | N.G. | N.G. |
| Charles Earl Stanhope .....                                          | G.   | G.   | G.   | N.G. | G.   | G.   | G.   | G.   | G.   | G.   |
| Peter Earl Cowper .....                                              | N.G. | G.   | G.   | N.G. | N.G. | G.   | G.   | G.   | N.G. | N.G. |
| Frederick William Earl of Bristol .....                              | N.G. | N.G. | N.G. | N.G. | N.G. | N.G. | N.G. | N.G. | N.G. | N.G. |
| Edward Earl of Oxford and Earl Mortimer .....                        | G.   | G.   | G.   | N.G. | N.G. | G.   | G.   | N.G. | G.   | G.   |
| George Earl of Glasgow .....                                         | N.G. | N.G. | N.G. | N.G. | N.G. | N.G. | N.G. | N.G. | N.G. | N.G. |
| John Earl of Stair .....                                             | N.G. | G.   | G.   | N.G. | N.G. | N.G. | N.G. | N.G. | N.G. | N.G. |
| John Earl of Breadalbane .....                                       | N.G. | G.   | G.   | N.G. | N.G. | G.   | G.   | N.G. | N.G. | N.G. |
| George Earl of Aboyne .....                                          | N.G. | N.G. | N.G. | N.G. | N.G. | N.G. | N.G. | N.G. | N.G. | N.G. |
| Thomas Earl of Kellie .....                                          | N.G. | N.G. | N.G. | N.G. | N.G. | N.G. | N.G. | N.G. | N.G. | N.G. |
| John Earl of Strathmore .....                                        | N.G. | N.G. | N.G. | N.G. | N.G. | N.G. | N.G. | N.G. | N.G. | N.G. |
| Henry Earl of Doncaster .....                                        | N.G. | N.G. | N.G. | N.G. | N.G. | N.G. | N.G. | N.G. | N.G. | N.G. |
| Frederick Earl of Carlisle .....                                     | N.G. | G.   | G.   | N.C. | N.G. | N.G. | G.   | N.G. | N.G. | N.G. |
| George Earl of Essex .....                                           | N.G. | N.G. | N.G. | N.G. | N.G. | N.G. | N.G. | N.G. | N.G. | N.G. |
| George Earl of Winchelsea and Nottingham .....                       | N.G. | G.   | G.   | N.G. | N.G. | N.G. | N.G. | N.G. | N.G. | N.G. |
| John Earl of Westmoreland .....                                      | N.G. | N.G. | N.G. | N.G. | N.G. | N.G. | N.G. | N.G. | N.G. | N.G. |
| John William Earl of Bridgewater .....                               | N.G. | N.G. | N.G. | N.G. | N.G. | N.G. | N.G. | N.G. | N.G. | N.G. |
| John Earl of Suffolk and Berks .....                                 | N.G. | G.   | G.   | N.G. | *    | G.   | G.   | G.   | G.   | N.G. |
| Edward Earl of Derby .....                                           | N.G. | G.   | G.   | N.G. | N.G. | G.   | G.   | G.   | G.   | N.G. |
| George Earl of Dartmouth, Lord Chamberlain of<br>the Household ..... | N.G. | N.G. | N.G. | N.G. | N.G. | N.G. | N.G. | N.G. | N.G. | N.G. |
| Heneage Earl of Aylesford, Lord Steward of the<br>Household .....    | N.G. | N.G. | N.G. | N.G. | N.G. | N.G. | N.G. | N.G. | N.G. | N.G. |
| Thomas Marquess of Headfort .....                                    | N.G. | G.   | G.   | N.G. | N.G. | G.   | G.   | N.G. | N.G. | N.G. |
| Francis Marquess of Hertford .....                                   | N.G. | N.G. | N.G. | N.G. | N.G. | N.G. | N.G. | N.G. | N.G. | N.G. |
| Charles Marquess Cornwallis .....                                    | N.G. | N.G. | N.G. | N.G. | N.G. | N.G. | N.G. | N.G. | N.G. | N.G. |
| John James Marquess of Abercorn .....                                | N.G. | N.G. | N.G. | N.G. | N.G. | N.G. | N.G. | N.G. | N.G. | N.G. |
| James Marquess of Salisbury .....                                    | N.G. | N.G. | N.G. | N.G. | N.G. | N.G. | N.G. | N.G. | N.G. | N.G. |
| Charles Marquess of Winchester .....                                 | N.G. | G.   | G.   | N.G. | N.G. | G.   | G.   | G.   | N.G. | N.G. |
| John Henry Duke of Rutland .....                                     | N.G. | N.G. | N.G. | N.G. | N.G. | N.G. | N.G. | N.G. | N.G. | N.G. |
| Aubrey Duke of St. Albans .....                                      | N.G. | G.   | G.   | N.G. | N.G. | G.   | G.   | N.G. | N.G. | N.G. |
| Henry Charles Duke of Beaufort .....                                 | N.G. | N.G. | N.G. | N.G. | N.G. | N.G. | N.G. | N.G. | N.G. | N.G. |
| Edward Adolphus Duke of Somerset .....                               | N.G. | G.   | G.   | N.G. | N.G. | N.G. | N.G. | N.G. | N.G. | N.G. |
| Charles Duke of Norfolk Earl Marshal .....                           | G.   | G.   | G.   | N.G. | N.G. | G.   | G.   | G.   | N.G. | N.G. |
| Henry Viscount Sidmouth, Lord Privy Seal .....                       | N.G. | G.   | G.   | N.G. | N.G. | G.   | G.   | G.   | N.G. | N.G. |
| William Earl Fitzwilliam, Lord President of the<br>Council .....     | G.   | G.   | G.   | N.G. | N.G. | G.   | G.   | N.G. | N.G. | G.   |
| His Highness William Frederick Duke of Gloucester .....              | G.   | N.G. | G.   | N.G. | N.G. | G.   | G.   | N.G. | G.   | N.G. |
| His Royal Highness Adolphus Frederick Duke of<br>Cambridge .....     | N.G. | N.G. | N.G. | N.G. | N.G. | N.G. | N.G. | N.G. | N.G. | N.G. |
| His Royal Highness Augustus Frederick Duke of<br>Sussex .....        | G.   | G.   | G.   | N.G. | N.G. | G.   | G.   | G.   | N.G. | G.   |

\* No Vote.



|                                                             | 1st  | 2nd  | 3rd  | 4th  | 5th  | 6th  | 7th  | 8th  | 9th  | 10th |
|-------------------------------------------------------------|------|------|------|------|------|------|------|------|------|------|
| His Royal Highness Ernest Augustus Duke of Cumberland ..... | N.G. | N.G. | N.G. | N.G. | N.G. | N.G. | N.G. | N.G. | N.G. | N.G. |
| His Royal Highness Edward Duke of Kent.....                 | N.G. | G.   | G.   | N.G. | N.G. | G.   | G.   | N.G. | N.G. | N.G. |
| His Royal Highness William Henry Duke of Clarence.....      | G.   | G.   | G.   | N.G. | N.G. | G.   | G.   | G.   | N.G. | G.   |
| His Royal Highness Frederick Duke of York ...               | N.G. | N.G. | N.G. | N.G. | N.G. | N.G. | N.G. | N.G. | N.G. | N.G. |
| Thomas Lord Erskine Lord Chancellor .....                   | N.G. | G.   | G.   | N.G. | N.G. | G.   | G.   | N.G. | N.G. | N.G. |

The Clerk, with the Lord Chancellor, proceeded to cast up the numbers at the Woolpack, which they found to be as follow :

|                  | 1st | 2nd | 3rd | 4th | 5th | 6th | 7th | 8th | 9th | 10th |
|------------------|-----|-----|-----|-----|-----|-----|-----|-----|-----|------|
| Not Guilty ..... | 120 | 81  | 83  | 135 | 131 | 88  | 85  | 121 | 121 | 124  |
| Guilty.....      | 15  | 54  | 52  | 0   | 3   | 47  | 50  | 14  | 14  | 11   |
| Majority .....   | 105 | 27  | 31  | 135 | 128 | 41  | 35  | 107 | 107 | 113  |

The numbers being ascertained, the Lord Chancellor ordered proclamation for silence ; which being made, his lordship addressed the House as follows :—

My lords, a majority of the lords have acquitted Henry viscount Melville of the high crimes and misdemeanors charged upon him by the impeachment of the Commons, and of all things contained therein.—And then, addressing himself to lord Melville, the Lord Chancellor said,

Henry viscount Melville, I am to acquaint your lordship, that you are acquitted of the articles of impeachment exhibited against you by the Commons for high crimes and misdemeanors, and of all things contained therein.

Lord *Melville* stood whilst the lord chancellor addressed him, and made a low bow when he had finished.

Lord Chancellor.—Is it your lordship's pleasure to adjourn to the chamber of parliament? —Ordered.

Adjourned to the chamber of parliament.

The House was resumed in the chamber of parliament.

Lord Chancellor.—Your lordships have resolved and adjudged, that Henry viscount Melville is acquitted of the several articles of impeachment exhibited against him by the Commons for high crimes and misdemeanors, and of all things contained therein ; and the impeachment is therefore dismissed.

Then the following order was made :—

It is ordered by the Lords spiritual and temporal in parliament assembled, that the lord high chancellor do give orders for the printing and publishing the trial of lord Melville ; and in addition thereto, the several questions put to the judges on Tuesday the 3rd, and Friday the 6th, of this instant June, and their answers thereto ; and that no other person do presume to print the same.

On May 23rd the thanks of the House of Commons were voted to the managers, upon the motion of the secretary at war. *Vide* 7 Hans. Parl. Deb. 351.

END OF VOL. XXIX.



|      |      |      |      |      |      |      |      |      |      |
|------|------|------|------|------|------|------|------|------|------|
| 1st  | 2nd  | 3rd  | 4th  | 5th  | 6th  | 7th  | 8th  | 9th  | 10th |
| N.G. | N.G. | N.G. | N.G. | N.G. | N.G. | N.G. | N.G. | N.G. | N.G. |
| N.G. | N.G. | N.G. | N.G. | N.G. | N.G. | N.G. | N.G. | N.G. | N.G. |
| N.G. | N.G. | N.G. | N.G. | N.G. | N.G. | N.G. | N.G. | N.G. | N.G. |
| N.G. | N.G. | N.G. | N.G. | N.G. | N.G. | N.G. | N.G. | N.G. | N.G. |
| N.G. | N.G. | N.G. | N.G. | N.G. | N.G. | N.G. | N.G. | N.G. | N.G. |
| N.G. | N.G. | N.G. | N.G. | N.G. | N.G. | N.G. | N.G. | N.G. | N.G. |
| N.G. | N.G. | N.G. | N.G. | N.G. | N.G. | N.G. | N.G. | N.G. | N.G. |
| N.G. | N.G. | N.G. | N.G. | N.G. | N.G. | N.G. | N.G. | N.G. | N.G. |
| N.G. | N.G. | N.G. | N.G. | N.G. | N.G. | N.G. | N.G. | N.G. | N.G. |

The Clerk, with the Lord Chancellor, proceeded to cast up the numbers at the Woolsack, which they found to be as follow :

|     |     |     |     |     |     |     |     |     |      |
|-----|-----|-----|-----|-----|-----|-----|-----|-----|------|
| 1st | 2nd | 3rd | 4th | 5th | 6th | 7th | 8th | 9th | 10th |
| 120 | 61  | 57  | 138 | 101 | 82  | 82  | 141 | 161 | 194  |
| 15  | 24  | 22  | 0   | 3   | 47  | 50  | 14  | 14  | 11   |
| 105 | 27  | 31  | 132 | 128 | 41  | 32  | 107 | 107 | 113  |

The numbers being ascertained, the Lord Chancellor, in pursuance of the resolution, which he had taken, his lordship addressed the House as follows :—  
 My lords, the result of the trial of the high crimes and misdemeanors charged upon him, is the acquittal of the defendant, and of all things contained therein. And I am addressing myself to Lord Melville, the Lord Chancellor, and to the House of Commons, that the trial of the high crimes and misdemeanors charged upon him, is the acquittal of the defendant, and of all things contained therein; and the impeachment is therefore dismissed.

Then the following order was made :—  
 It is ordered by the Lords spiritual and temporal in parliament assembled, that the Lord high chancellor do give orders for the printing and publishing the trial of Lord Melville; and in addition thereto, the several questions put to the judges on Tuesday the 3d, and Friday the 5th of this instant June, and their answers thereon; and that no other person do presume to print the same.

On Monday the 11th of the month of June, 1800, the House of Commons were voted to the minutes, upon the motion of the Hon. Mr. Pitt, that the House do resolve, that the trial of Lord Melville, and the answers to the questions put to the judges, be printed and published.

The House then adjourned to the 12th of the month of June, 1800, at ten o'clock.

The numbers being ascertained, the Lord Chancellor, in pursuance of the resolution, which he had taken, his lordship addressed the House as follows :—  
 My lords, the result of the trial of the high crimes and misdemeanors charged upon him, is the acquittal of the defendant, and of all things contained therein. And I am addressing myself to Lord Melville, the Lord Chancellor, and to the House of Commons, that the trial of the high crimes and misdemeanors charged upon him, is the acquittal of the defendant, and of all things contained therein; and the impeachment is therefore dismissed.

Then the following order was made :—  
 It is ordered by the Lords spiritual and temporal in parliament assembled, that the Lord high chancellor do give orders for the printing and publishing the trial of Lord Melville; and in addition thereto, the several questions put to the judges on Tuesday the 3d, and Friday the 5th of this instant June, and their answers thereon; and that no other person do presume to print the same.











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